THE LIMITATION ACT

[NEW]

AN ANALYTICAL COMMENTARY
WITH LATEST CASE-LAW

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THE LIMITATION ACT

(Act No. 36 of 1963)

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THE LIMITATION ACT, 1963

(ACT NO. 36 OF 1963)

[*5th October, 1963*]

An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows :

History of the Law of Limitation in India.

"Under the Hin du jurisprudence there was only a law of prescription and no Law of Limitation as such. For the acquisition of title by prescription, a period of 10 years was laid down by certain *Smriti* writers, though o hers differed regarding the length of the period. The main occupation of the people being agriculture and there being very little of commerce or trade, concentration was more on the land and the rights therein. This was the position not only in Hindu society but also in other countries, thus in England, before the James Statute of 1623 there was no specific law of limitation. Before 1858, two systems of law of limitation were administered by the Courts in India. In the territories within the original jurisdiction of the Courts established by Royal Charter in the Presidency towns of Calcutta, Madras and Bombay, the English law, and in the mofussil courts, the law as laid down by the Regulations, was administered. The first attempt to introduce a uniform Law of Limitation applicable alike to Courts established by Royal Charter and other Courts was made by the Limitation Act, 1859 (XIV of 1859) which came into operation in 1862." (Third Report of the Law Commission, para 2).

This Act of 1859 was replaced by a new Act of 1871 which provided for the limitation of suits, appeals, and certain applications to Courts and it also provided for the acquisition of easements and the extinguishment of rights to land and hereditary office at the determination of a specified

period. The Act dealt with both limitation and prescription. The Act of 1871 again was repealed by Act XV of 1877. This Act provided for the extinguishment of rights not only to lands and hereditary office but also to any property including movable property. It also defined "easement" as including profits a prendre. After a number of amendments in various years, Act of 1877 was finally replaced by Act IX of 1908, repeating in substance the provisions of Act XV of 1877, the alterations being confined to matters of detail.

This Act of 1908 remained in force till the present Act No. 36 of 1963 was passed in October, 1963. Although the need for reform of the Law of Limitation in India was felt as far back as 1925 or even earlier when the Civil Justice Committee of 1925 formulated a question : "In what cases do you consider that the Law of Limitation might be made more stringent", yet the matter was seriously taken up only in 1935 when the Law Commission took up the consideration of the Act in detail. The Law Commission examined the provisions of the 1908 Act with a view to see in what manner they could be simplified and modernised in the light of judicial decisions which had brought to light difficulties and doubts and submitted its report in July 1956. The report was considered by the Government and a Bill was introduced to give effect to the recommendations of the Commission. The Bill was passed and the Limitation Act (36 of 1963) received the assent of the President on October 5, 1963 and published in the Gazette of India, Extraordinary Part II, section 1, Page 319, dated 5th October, 1963. This is the Act now in force.

Reasons and object of the Law of Limitation.

The object of the Limitation Act is to quiet long possession and extinguish state demands. The principle upon which the statutes of limitation are *based* is, that it is to the interest of the State that remedies for violated rights should be sought in court without delay. Violated rights and suits based upon them require evidence to establish and substantiate them in a Court of Law. Long delay may obliterate all evidence and the fact may tend to the prejudice of justice. Lord Plunkett, the Lord Chancellor, is reported to have said, "time

holds in one hand scythe and in the other an hour glass, the scythe mows down the evidence of our rights, the hour glass measures the period which render that evidence superfluous.''

Unlimited and perpetual litigation disturbs the peace of society and leads to disorder and confusion. A constant dread of Judicial process and a feeling of insecurity retard the growth and prosperity of a nation. Labour is paralysed when the enjoyment of its fruits is uncertain. Moreover where state claims leave the Court no time to attend promptly to more recent and urgent cases, creditors and injured parties in general are led to suspect the readiness of the State to enforce their rights. It is, therefore, expedient that the possibilities of litigation should be limited and restricted. The Law of Limitation prescribes this limit. The Romans, therefore, had the maxim *interest republicae ut sit fines litum* (the interest of the State requires that a period should be put to litigation). "The law of limitation prevents persons from enforcing their own rights, and disputing the rights of others, after a certain period of time, and thus quiets titles and enhances the value of property. It enables men to reckon upon security from further claim and to act upon it. The necessity for putting a limit to litigation arises also from the perishable nature of man and all that belongs to him. It has been said by John Voet that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal. The death of parties and witnesses, the loss or destruction of documents and the fading of memory, in the course of time, render such a limit highly expedient for putting a limit to litigation." No hindrance should be placed upon free circulation of property but so long as the title to property remains dubious and unsettled such circulation cannot take place freely or at all. Laws of limitation enjoin alertness upon the citizen by making a citizen who delays too long to lose his right altogether, *Vigilantibus non dormentibus Jura subvenient* (the laws assist the vigilant and not those who sleep over their rights).

Statutes of limitation are statutes of repose, peace and justice

The statute of Limitation (it has been said) is a statute of repose, peace and justice. It is one of repose because it extinguishes stale demands and quiets title. It secures peace as it ensures security of rights, and it secures Justice, as by lapse of time evidence in support of rights may have been destroyed. Of late years the desire has been general, both on the part of the legal profession and on the part of the public, to abridge the length of the time during which actions may be commenced, and there can be little (if any) doubt that the policy of the statutes of Limitation is good, and is one to be encouraged. They are such legislative enactments as prescribed the periods within which actions may be brought upon certain claims, or within which certain rights may be enforced.

The law of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice.

Mr. Justice Story in his *Conflict of Laws* observed as follows :

"Laws thus limiting suits are founded in the noblest policy. They are statutes of repose, to quiet titles, to suppress frauds and to supply deficiency of proofs arising from the ambiguity or obscurity or the antiquity of transactions. They proceed upon the presumption that claims are entinguished or ought to be held extinguished, whenever they are not litigated in the proper *forum* (court) within the prescribed period. They take away all solid grounds of the complaint because they rest on the negligence or neglect of the party himself. They quicken diligence by making it in some measure, equivalent to right. They discourage litigation by bringing in one common receptacle all the accumulations of past times which are unexplained, and have now, from lapse of time, become inapplicable."

The Indian Limitation Act lays down definite rules of law, giving to the people for whose benefit they have been framed a guarantee that after a lapse of certain period they may rest in peace and rely upon titles or other rights which they have acquired.

Statutes of limitation rest upon second policy and tend to the peace and welfare of the society.

Difference between Limitation and Prescription.

The Indian Limitation Act deals with the Law of *Prescription* as well as the Law of *Limitation*. A law of *Prescription* prescribes the period at the expiry of which not only the Judicial remedy is barred but a substantive right is *acquired* or *extinguished*. A law of Limitation limits the time after which a suit or other proceeding cannot be maintained in a Court of Justice. It simply bars the judicial remedy but it neither affects the extra-judicial remedies nor the substantive right itself.

Prescription is the acquisition of title by possession of property for the prescribed period provided that possession was neither forcible nor clandestine (hidden) nor permissive. Such possession acquires its title chiefly on account of the fact that those who had interest in the property have allowed their rights to get barred by not caring to pursue their remedies within the time allowed by law to enforce those remedies.

Limitation as affecting the remedy comes under the head of adjective law. The Law of Prescription, on the other hand, as affecting the substance of the right itself comes under the department of substantive law.

The Indian Limitation Act on the one hand limits the time at the expiration of which civil rights cannot be enforced ; on the other hand it prescribes the length of use by which a right to a property may be acquired. Limitation is negative in its operation depriving a person of a power which he possessed before. Prescription on the other hand is affirmative conferring on a person a right to that which he hitherto enjoyed, in fact but not in right (*e. g.*, a trespasser is an owner in fact and not in law).

Distinction between limitation and laches and acquiescence

Laches has its origin in the doctrine of equity. Halsbury's Laws of England Volume XIII in Equitable Defence Chapter, 1910 Edition says, "the legislature in enacting a statute of limitation specifies fixed periods after which claims are barred ; equity does not fix a specific limit but considers the circumstances of each case in determining whether there has been such delay as to amount to Laches". In the case of equitable reliefs, Courts of Equity in England refused to grant such reliefs to an applicant who had wilfully slept over his rights. This principle is applicable in India also in so far as discretionary orders of the court are claimed, *e. g.*, specific performance, permanent or temporary injunction, appointment of receiver. In such cases courts can still refuse relief where the delay on the applicant's part has prejudiced the defendant even though the applicant might have come to court within the period prescribed by the Limitation Act. (*Uda Begum* v. *Imam-ud-Din* (1875) All. 82 at page 86).

The basis of the doctrine of limitation is different from the basis of the doctrine of laches. The former (doctrine of limitation) is based upon public policy .and utility while the latter is based upon *equity*. Laches like limitation no doubt deprive the plaintiff of his remedy but it depends upon general principles of justice and fairplay while limitation depends npon *express law*. A positive rule of limitation cannot depend whether there is laches or not and except in the case of discretionary orders, the defence of laches or acquiescence cannot prevail when a statutory period of limitation is prescribed for an action. In other words, in cases where the court is bound to grant a relief if the plaintiff proves his case, there is no question of laches affecting the plaintiff's rights provided the sult is instituted within the time limited by law. So long as the period of limitation is not allowed to be crossed over, there is no reason why a person should lose his rights simply on the ground that a long time has lapsed although well within the period of limitation. (*Rup Chand* v. *Madan Mohan*, A. I. R. 1960 Cal. 351).

If a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress, he cannot afterwards complain. This is the proper sense of the word acquiescence.

The chief points to be considered in connection, with laches are—

(1) Acquiescence on the plaintiff's part ;

(2) Any change of position on the defendant's part.

The whole fault of the plaintiff lies in this that he remains standing by while the violation of the right is in progress. This may be construed to mean the giving of assent in an implied manner after the plaintiff has become aware of the violation of his right. It is unjust to give the plaintiff a remedy where he has by his conduct done that which might fairly be regarded as a waiver of that remedy. It may also be regarded that by his conduct and neglect he has put the other party in the position in which it would not be reasonable to allow the plaintiff to assert the contrary. In such cases lapse of time and delay are most material and upon them rests the doctrine of laches. '*A*' is the owner of a plot of land. By mistake a portion of the plot belonging to *A* has been included in a sale deed executed by '*C*', a contiguous owner, in favour of *B*. *B* thinking that he is the owner of the whole property purchased by him and for which he has paid money, begins to construct a building on the part of which *A* is the real owner. *A* being aware of his own ownership and of the fact that his own plot has been wrongly included in the sale deed of *B* and that his own plot is being built upon by *B* under a mistaken belief that *A*'s plot really belongs to *B*, if *A* allows *B* to continue the construction without disabusing *B* of his mistake *A* will lose the right of recovering his plot of ground back. In equity it was the duty of *A* to inform *B* of *A*'s ownership and to disabuse *B* of his mistake. *A* stands by and allows *B* to complete the construction. *A* is guilty of laches and is estopped from asserting his own title because

it was by his own conduct that B was induced to continue the construction and change his position by spending a lot of money over the construction. Here the right of *A* would be barred by laches and acquiescence although the period of limitation to file the suit is still unexpired. This shows that the remedy of a person by the application of the doctrine of laches may become barred before the period prescribed by law has expired.

Laches and acquiescence are based upon general principles while limitation is a matter of express and inflexible rules of law and applies independently of the existence of laches or acquiescence. Acquiescence and laches again may be pleaded either against the plaintiff or the defendant, while limitation can be pleaded generally only against the plaintiff.

Construction of statutes of limitation

The fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. In construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide. (*Bababhau* v. *Rangulal Bankatlal*, A. I. R. 1955 Nag. 145 (F. B.) ; A. I. R. 1957 Punj. 273). The provisions of the Limitation Act have to be strictly construed and they cannot be extended by analogy or on principles. (*K. S. Ramaswami* v. *S. V. Krishnier*, A. I. R. 1957 Mad. 431).

A law of limitation and prescription may appear to operate harshly or unjustly in particular cases, but where such law has been adopted by the State, it must, if unambiguous, be applied with stringency. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by it. (*Kripal Shah Sant Singh* v. *Sri Harkishan Das*, A.I.R. 1957 Punj. 273). But where the language of a law relating to limitation is not precise and is or doubtful import, such law may be construed equitably, or reasonably, that is, such construction thereof may be adopted which favours the right to sue rather than which bars that right. Where two

interpretations are found to be equally possible, the Court must impute a reasonable intention to the Legislature and hold the suit not to be falling within a shorter period of limitation. (*Jethmal* v. *Amb Singh*, A. I. R. 1955 Rajasthan 97 (F.B.).

Retrospective operation of the Act

The general rule is that a statute of limitation, being a law of procedure, is retrospective in its operation and governs all proceedings from the moment of its enactment even though the cause of action might have accrued before the Act came into existence. Therefore, the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding, unless there is a distinct provision to the contrary. Thus, a suit brought in 1904 on a mortgage executed in 1870 would be governed by the Limitation Act of 1867, not by the Act of 1859. Similarly, if an *ex parte* decree is passed when the Act of 1877 is in force, and the application for setting aside the decree is made when the Act of 1908 comes into operation, the application would be governed by the Act of 1908. But it must be kept in mind that if the retrospective operation of the Act disturbs or impairs vested rights or inflicts such hardship or injustice as could not have been within the contemplation of the legislature, the Act should not be construed retrospectively.

Although a law of limitation has retrospective operation, there is overwhelming authority, in favour of the principle that where a subsequent law curtails the period of limitation previously allowed, and such law comes into force at once, it should not be allowed to have retrospective effect, which it would otherwise have, so as to destroy pre-existing vested rights of suit, because the giving of such retrospective effect amounts not merely to a change in procedure but a forfeiture of the very right to which the procedure relates. (*Jethmal* v. *Amb Singh*, A. I. R. 1955 Rajasthan 97 (F. B.)).

It is quite true that the Act which applies for deciding as to whether a suit or an application is in time is the Act which is in force at the time when the suit or application is filed,

But to that there is an important exception. When there is an amendment, if under the unamended Act the remedy has been taken away, then the extension of the period of limitation by the Amending Act would not by itself revive the remedy. Of course it is always permissible to the legislature by specifically so enacting to direct that the Amending Act would apply. But if there is nothing special in the Act by which the period of limitation for filing a suit or application is extended by an Amending Act, then unless the right to sue or the right to make an application was in existence when the Amending Act came into force the Act does not help and a remedy which is barred would not be revived. (*Fakiraya Viraya Mathapati* v. *Achappanaick Bhimappanaik*, A. I. R. 1956 Bom 600; *Mst. Mohan Kaur* v. *Custodian, M. E. P. Patiala*, A. I. R. 1956 Pepsu 58).

Act, if exhaustive

The Indian Limitation Act is an exhaustive code governing the law of limitation in India in respect of all matters specifically dealt with by it, and the Indian Courts are not permitted to travel beyond its provisions to add to or supplement them. In respect of matters not dealt with by the Act, however, the Act does not apply and there will be no limitation in respect of such matters. In such cases courts ought to act on the principle that every procedure is to be understood as permissible till it is shown to be prohibited by law.

The Act lays down the law relating not only to the limitation of all suits and appeals but of certain applications also These applications are specified in the Articles of the Act dealing with applications. The Act does not govern an application which does not fall under one or the other of these Articles. The Limitation Act applies only to such applications as a party is bound to make for securing the relief he requires and does not apply when the application relates to an action which the court ought to take of its own motion whether the party applies for it or not, or which the court has no discretion to refuse or which is only ministerial or is only of a formal character.

Limitation and Criminal Proceedings

The Indian Limitation Act is not applicable to criminal proceedings. The reason is that it is undesirable that persons who have been guilty of serious crimes should be free from the reach of the long arms of the law after a few years' time ; that would be rather an encouragement to evil doers, who have only to hide themselves for a few years in order to render themselves immune from prosecution. It is the realization that if a crime is committed he would for the rest of his life remain liable to be hauled up for it. that works as a powerful deterrent to a person criminally inclined. Allowing prosecutions to be barred would really hold out a reward to ingenious villainy. (Khambata's Introduction to Law of Limitation and Prescription). Therefore unless there is any specific provision in the Act to the contrary, criminal prosecutions may be commenced at any time.

Limitation bars remedy but does not destroy right.

The Indian Limitation Act prescribes periods after the expiry of which a suit cannot be maintained in a court of justice to enforce a right, but it does not destroy the right itself, *e. g. A* from time to time advances money to *B* and each time that he advances money to *B* he enters the item advanced in his account book. Let us suppose he has advanced six items of money on six different dates each succeeding item being separated from the previous one by a period of six months. Four years after the first advance was made the period of three years fixed for the filing of the suit for the recovery of the first item of advance has expired and the remedy of *A* for filing a suit is barred by limitation. Here although the remedy is barred, the right of *A* to recover the amount of the first advance is not extinguished but still survives although his right to file the suit for the recovery thereof is barred by limitation. Thereforee, if *B* the debtor pays the amount of the first advance after it has become barred or if he pays an amount without specifying towards which of the six advances it might be credited and the creditor applies it in the payment of the first item of advance the creditor will be fully justified in law in doing so and the payment wouln not be allowed to be recalled on the ground

of failure of consideration. A barred debt is a good consideration for a written promise to pay it.

Section 27 of the Limitation Act is, however, an exception to the general rule that in personal actions, the Limitation Act bars only the remedy and does not extinguish the right. In a suit for possession of any property on the determination of the period of limitation not only the remedy but the right also, is extinguished under Sec. 27. But a debt does not cease to be due, because it cannot be recovered after the expiration of the period of limitation provided for instituting a suit for its recovery. After a debt becomes barred a person is still deemed to owe. (*First National Bank Ltd.* v. *Seth Santlal*, A. I. R. 1954 Punjab 328).

Limitation only applies to institution of proceedings, not to their continuation

The bar of limitation arises only where a suit is instituted, an appeal preferred or an application made after the prescribed period of limitation. Thus, the bar only applies where a proceeding has been instituted after the period of limitation. The bar does not apply to steps which constitute a mere continuation of pending proceeding. Thus, where an application for execution has been filed within the period of limitation, but subsequently an application is made to continue the execution proceeding, the latter application is not subject to any period of limitation. Similarly, where a suit is validly instituted, but the plaint is returned for some purpose and re-presented, such re-presentation is only a continuation of the suit and does not affect the question of limitation.

PART I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Limitation Act, 1963.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Note

The Act came into force from January 1, 1964, vide Gazette of India, **Part II,** section 1, Extraordinary, dated 5th **October, 1963.**

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "Applicant" includes—

(*i*) a petitioner;

(*ii*) any person from or through whom an applicant derives his right to apply;

(*iii*) any person whose estate is represented by the applicant as executor, administrator or other representative;

(*b*) "application" includes a petition;

(*c*) "bill of exchange" includes a hundi and a cheque;

(*d*) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*e*) "defendant" includes—

(*i*) any person from or through whom a defendant derives his liability to be sued ;

(*ii*) any person whose estate is represented by the defendant as executor, administrator or other representative;

(*f*) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another;

(*g*) "foreign country" means any country other than India;

(*h*) "good faith"—nothing shall be deemed to be done in good faith which is not done with due care and attention;

(*i*) "plaintiff" includes—

(*i*) any person from or through whom a plaintiff derives his right to sue;

(*ii*) any person whose estate is represented by the plaintiff as executor, administrator or other representative;

(*j*) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act ;

(*k*) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight ;

(*l*) "suit" does not include an appeal or an application ;

(*m*) "tort" means a civil wrong which is not exclusively the breach of a contract or the breach of a trust ;

(*n*) "trustee" does not include a *benamidar*, a mortgagee remaining in possession after the mortgage has been satisfied or a person in wrongful possession without title.

Notes

'**Application**.'—In clause (b) of section 2 of Limitation Act, 1963, a new definition of the word 'application' has been inserted. Clause (b) provides that 'application' includes a petition. In view of the said new definition of the word 'application', the scope of the Limitation Act has been enlarged by making it applicable to applications and to petitions under special enactments. *Ram Kumar Kajaria* v. *M/S Chandra Engineering* (*India*) *Ltd.*, A. I. R. 1972 Cal. 381.

'**Good faith**'.—The word "good faith" has been defined in section 2 (h) of the Limitation Act and when the question is whether the period of limitation should be extended or not and whether the delay in making good the deficiency in court-fee should be condoned or not it would be more appropriate to apply the definition given in the Limitation Act. *Amer Kaur* v. *Iqbal Singh* A. I. R. 1971 Punjab 461.

Where a plaintiff resisted the objection timely raised by the defendant regarding non-joinder of parties at the initial stage and also at the revisional stage and ran the risk of proceeding with the suit without impleading the necessary parties, he cannot be said to act in good faith because he cannot be said to have acted with due care and attention. *Rabindra Nath Samuel Dawson v. Sivakami* A. I. R. 1972 S. C. 730.

"**Plaintiff**" and "**Defendant**".— The definitions of

"plaintiff" and "defendant" as they stood in the old Act of 1908 were in the following forms.—

"Plaintiff" includes any person from or through whom he derives his right to sue.

"Defendant" includes any person from or through whom a defendant derives his liability to be sued.

The object of this inclusive definition was to make it clear that the cause of action for a person in whom the right to sue is vested and the person on whom the right has subsequently devolved is one and the same. This position holds good in the case of executors, administrators and representatives also but it was not realized when the Act of 1908 was passed. To correct this omission the definitions have been enlarged so as to include not only a person from whom the plaintiff or the defendant derives his right or liability to sue or be sued but also a person whose estate is represented by an executor, administrator or other representative.

PART II

Limitation of suits, appeals and applications

3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,—

(*a*) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer ;

(*ii*) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(*iii*) in the case of a claim against a company which is being wound up by the court,

when the claimant first sends in his claim to the official liquidator ;

(*b*) any claim by way of a set off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted,—

(*i*) in the case of a set off, on the same date as the suit in which the set off is pleaded ;

(*ii*) in the case of a counter-claim, on the date on which the counter-claim is made in court ;

(*c*) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.

Notes

Section 3 lays down that a suit or an appeal or an application filed beyond the time prescribed therefor *shall be dismisssed* although limitation is not set up as defence by the opposite party. (*Anantam Veeraju* v. *Valluri*, 1960 A. I. R. Andhra Pradesh 222). In a civil suit when a plea which should have been raised by a party as a defendant in a suit or respondent in an appeal or as an opposite party in an application is not raised by him the court may take no notice of it, but the case with regard to the plea of limitation is different inasmuch as by virtue of this section, *the court is under a duty to raise the point itself and dismiss the suit, appeal or application* if it has been filed beyond the time prescribed for it by the schedule of the Limitation Act which prescribes a period for each suit, appeal or application and also states when the time so limited begins to run. It is not competent to a party even to waive a plea of limitation so as to absolve the court from its duty to dismiss a suit or other proceeding which has been instituted after the period of limitation, although limitation has not been set up as a defence. (*Shanker Dass Narayandass* v. *Sita Ram Jwala Prasad*, A. I. R. 1956 Pepsu 83).

Suit—when instituted.

Sub-section 2 (a) to the section provides as to when a suit is to be deemed as instituted for purposes of limitation.

According to sub-section 2 (a) a suit is instituted, in an ordinary case, when the plaint is presented to the proper officer. But the sub-section contemplates that the plaint presented must be a *valid plaint.* According to the Court-Fees Act a plaint on which the requisite Court-fee has not been paid is not valid and hence the presentation of a plaint not properly stamped would not save limitation under this section. But under Section 149 and Order 7, Rule 11 of the Civil Procedure Code, the court has power to allow the court-fee to be paid at any time after the presentation of the plaint and on such payment it will be validated retrospectively from its original presentation.

Similarly, when a plaint is returned and ordered to be amended with a time fixed by the Court, it is the date of the original presentation of the plaint and not the date of the subsequent presentation after amendment, which is taken to be the date of institution of the suit. But if the amended plaint is not presented within the time fixed by the Court, the date of subsequent presentation will be treated as the date of presentation, and if such date falls beyond the period of limitation, the plaint will be deemed as filed beyond time.

If a plaint has been insufficiently stamped at its presentation, and the deficiency is supplied after the expiration of the period of limitation, and after the expiry of the time fixed by the Court for the supply of the deficient stamps, it will be liable to rejection and the suit will be considered as barred. (*Brahmomoyi* v. *Andi Si*, 27 Cal. 376). Wholly unstamped and insufficiently stamped documents are treated on the same footing in view of the provisions of Sec. 149, C. P. C. which makes no distinction between wholly unstamped and insufficiently stamped documents.

Where a plaint presented in the Munsif's Court was grossly undervalued and was returned for presentation to the

proper court, but was filed again after limitation in the same court after striking off certain items of property so as to bring the suit within the jurisdiction of the said court; *Held* that the new plaint could not be treated as a continuation of the previous suit. (*Chandrayya* v. *Seethamma*, A. I. R. 1940 Mad. 689).

The mere *presentation* of the plaint (of course a valid plaint) is sufficient to constitute the institution of a suit under this section and registration of the plaint is not necessary for this purpose. But the presentation must be valid according to law, *i. e.*, presentation must be made by a duly authorised person and in a manner and under the conditions which make it valid under the law.

Hence a suit is instituted when a *valid* plaint *is presented according to law to a proper officer.*

Appeal -when preferred

The section does not deal with the question of preferring of appeals. This question depends upon other branches of law. Order 41, Rule 1 of the Civil Procedure Code and Section 419 of the Criminal Procedure Code lay down how appeals are to be preferred.

Application—where made.

The section does not provide anything as to when an application is to be deemed as made for purposes of limitation. Hence the question depends upon the Civil Procedure Code and the rules made thereunder.

Agreement or consent of parties.

Parties cannot by consent or agreement extend or alter the period of limitation. No one can contract himself out of the statute of limitation and consequently, where the result of a compromise between the decree-holder and the judgment-debtor was that the limitation provided by law was extended, it was open to the judgment-debtor to plead that the decree-holder's application for execution was barred by limitation. [*Gobardhan* v. *Dau Dayal*, 1932 A.L.J. 865 (F. B.)].

Special or Local Laws.

By section 29 (2) of the Act section 3 has been made applicable to special or local laws. Therefore, every suit, appeal or application, for which a period of limitation is prescribed by a special or local law, must be dismissed if it is made or filed after the prescribed period, even though limitation is not set up as a defence.

Plea of limitation for the first time in appeal.

The point of limitation may be allowed to be raised for the first time in appeal. (*K.V. Rao* v. *D. V. Rao*, 1956 Andhra W.R. 1056). But the appellate court is not bound to consider a plea of limitation set up for the first time in appeal if it is a mixed question of fact and law and if the question cannot be decided without taking fresh evidence. (*Peer Mohammad* v. *Kassim Pillai*, A. I. R. 1955 T. C. 188). Where the claim is time-barred on the allegation contained in the plaint itself, there is no reason why the plea of limitation should not be upheld even if raised in the appellate court. (*Kashi Ram* v. *Kundan Lal*, A. I. R. 1956 All. 060).

Counter claim.—A counter claim is to be regarded as a separate suit and must be *deemed to have been filed on the day on which such claim is made.*

Claim for set-off.—Any claim by way of set-off is to be treated as a separate suit and is to be deemed to have been instituted on the same date as the suit in which the set-off is pleaded.

4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this sec-

tion if during any part of its normal working hours it remains closed on that day.

Notes

Section 4 gives expression to the general principle of law enunciated by the maxims *Lex non cogit ad impossibilia* — the law does not compel a man to do that which he cannot possibly perform, and *Actus curiae neminem gravabit*—an act of the court shall prejudice no man. This section does not in any way extend the period of limitation, nor does it furnish any data for computation of time, it merely embodies a rule of elementary justice that if the time allowed by statute to do an act or to take a proceeding expires on a day when the court is closed, it may be done on the next sitting of the court. (*Raja Pande* v. *Sheopujan Pande*) 1942 A. I. R. All. 429; A. L. J. 562 (F. B.). Consequently a litigant is not entitled in computing the period of limitation for the filing of an appeal, to take into account the time taken in obtaining copies of the judgment and decree appealed from if the application for those copies is made after the expiry of the period of limitation, notwithstanding the fact that the right to file the appeal still subsists in view of the provisions of S. 4. [*Mukat Behari Lal* v. *Addl. D M.*, 1959 A. L. J. 456].

Their Lordships of the Privy Council observed in *Maqbool Ahmad* v. *Onkar Pratap*, A.I.R. 1935 P. C. 85 that "what the section provides is that, where the period prescribed expires on a day when the court is closed, notwithstanding that fact, the application may be made on the day that the court reopens, so that there is nothing in the section which alters the length of the prescribed period". This Section deals with extension of time over that period during which a person is delayed by the Court's action.

Applicability

This section is limited in its applicability to the institution, preferring or making of suits, appeal or applications where a period of limitation has been prescribed therefor.

This section applies to cases governed by special or local

laws, vide section 29 (2) by which the provisions of section 4 have been made expressly applicable "for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law." Thus if the period of three months limited for a suit under section 111, clause (b) of the U. P. Land Revenue Act expires on a holiday, a suit instituted on the next court-day is within time. [*Dhanpati* v. *Kandhaiya*, A.I.R. 1930 Oudh 37].

An appeal under section 116-A, Representation of the People Act can be filed on the reopening day of the court under section 4 read with sec. 29 of the Limitation Act when the period prescribed by the special law expired when the court was closed. (*D. P. Mishra* v. *Kamal Narayan* A.I.R. 1970 S. C. 1477).

The section does not apply to cases where a certain date has been fixed by a private agreement between the parties. It applies only to cases where a certain period has been prescribed by a statute.

Example.—After a sale in execution of a decree, the decree-holder agreed to have the sale set aside on receipt of the decretal amount within two months from the date of sale. The last day of the two months being a holiday, the judgment-debtor deposited the decretal amount in court on the re-opening of the court ;

Held, that the decretal amount not having been paid to the decree-holder within two months from the date of sale, the sale could not be set aside, and the fact that the court was closed when the two months expired would not entitle the judgment-debtor to get the benefit of Sec. 4 and to deposit the money on the re-opening day. [*Adya Singh* v. *Nasib Singh*, 1920 P. L. T. 227].

"**Prescribed period**."—The words have been defined in the Act and mean the period of limitation computed in accordance with the provisions of this Act. This new definition has set at rest the controversy under the old Act that the words mean only the periods of limitation prescribed in the Schedule to the Act and do not attract the extensions of periods of limitation under the sections.

Court—when closed

The question whether in any particular case the court is closed is one of fact which must depend upon the practice which prevails in the particular court. (*Ranbir* v. *Prabhakar*, A. I. R. 1955 Nag. 300). Whether the court is closed on an authorised holiday or on a working day is immaterial; to attract the application of this section, it is sufficient that the court is, in fact, closed. (*Bishan Chand* v. *Ahmad Khan* (1876) 1 All. 263). There may be a vacation, yet the court may be open for certain classes of business such as admission of plaints, filing of written statements and hearing of short cases. A court cannot be deemed to be closed within the meaning of this section during a vacation, if for the purpose of the particular business in question the office of the court is open. A court will not be deemed to be closed, if the presiding officer is on tour. The plaint, in such cases, is to be presented to such officer in his camp. (38 Mad. 295 (F.B.)).

When a court competent to entertain an application for execution is absent on tour and there is no other officer competent to receive such application, the court must be held to be closed as long as the court is absent. (*Badri Narayan Singh* v. *Kalyan Prasad Shroff*, A. I. R. 1956 Pat. 225).

Where the court remained open on a particular day, it does not matter in the least whether any court work was transacted or not. ((*Dwarka Prasad* v. *Union of India*, 1954 B. L. J. R. 236).

According to the Explanation attached to this section a court is deemed to be closed on any day if during any part of its normal working hours it remains closed on that day. In other words if a court remains closed only for a few hours during its working hours on any day, it will be treated as closed on that day and the suit, appeal or application may be instituted, preferred or made on the next reopening day.

The word "court" in this section does not mean a wrong

court. Therefore, the court closed must be the right court and not the court in which the suit is wrongly instituted.

The word "court" means a proper court which has jurisdiction to entertain the suit. Thus, the benefit of filing a suit on the day of re-opening, the prescribed period of limitation having expired on the day of closure, will not be available if the court in which the suit had been filed had no jurisidiction to entertain the suit. *Amar Chand* v. *Union of India* A. I. R. 1973 S. C. 313. The decision of the Privy Council in *Maqbul Ahmad* v. *Pratap Narain Singh* A. I. R. 1935 P. C. 85 was followed by the Supreme Court. In this case the Privy Council said : What section 4 "provides is that, where the period of limitation prescribed expires on a day when the court is closed the application may be made on the day when the court reopens. In their Lordships' view that means the proper court in which the application ought to have been made...."

Examples.—(1) A suit was filed in the Sub-Judge's Court at Agra on June 2, 1913. Limitation expired on June 1, which was a holiday. The Agra Court held that it had no jurisdiction and consequently returned the plaint on Jan. 21, 1914 for presentation to the proper court at Aligarh. It was so presented on Jan. 22. *Held*, that the suit was barred, for though the plaintiff might be entitled under Sec. 14 of the Limitation Act to deduct the time during which the suit was pending in the wrong court, he was not entitled to the exclusion of the extra day, *viz.*, June 1, on which the wrong court was closed. (*Makund* v. *Ramraj*, 14 A. L. J. 310).

(2) A plaint which was presented in a wrong court was returned on 20th March, 1924 for presentation to the proper court. The next three days being holidays in the court in which the plaint was to be presented, the plaintiff re-presented the same on 24th March, 1924 being the re-opening day of the court ; *Held*, the representation was proper. (A. I. R. 1929 Cal. 315). No period preceding the original presentation of the plaint in the wrong court can be deducted under Sec. 14 of the Limitation Act. But if after deducting the period allowed under that section, the limitation expires on a day on which the court is closed, the plaint can be presented on the re-opening day.

(3) In a case the trial court held that although the application for setting aside the *ex parte* decree should have been filed by the 30th of December, 1951, and although on the 2nd of January, 1952, the court remained open, work having been transacted on that date, the application filed on 25th January, 1952 was in time because the court remained closed from the 3rd of January to the 24th of January, 1952.

Held, that the court was entirely in error in thinking that as no work was transacted on the 2nd of January, 1952, the court would be deemed to have remained closed on that date. The court remained open on the 2nd of January, 1952 and it did not matter in the least whether any court work was transacted or not. The court remained open on that date and if the litigants wanted to make an application or file a suit they could have done so on that date. (*Dwarka Prasad* v. *Union of India*, 1954 B. L. J. R. 236 : A. I. R. 1954 Pat. 384).

Acknowledgment made during holidays.—According to the Allahabad High Court an acknowledgment made after the expiry of the period of limitation but during the holiday, is a good acknowledgment. (*Abdul Ghani* v. *Chironji Lal*, A. I. R. 1927 All. 577). But the Bombay High Court holds a contrary view. See *Bai Hemkore* v. *Masamali*, (1902) 26 Bom. 782.

Difference between section 4 and section 12 and 14.—The language of section 4 pre-supposes that the period of limitation has already expired but it has expired an a day when the court was closed, and it provides that, despite the fact that limitation has expired, the suit, appeal or application may be instituted, preferred or made on the day on which the court re-opens. There is nothing in section 4 on the basis of which it could be said that it has the effect of extending or enlarging the period of limitation. The language of sections 12 and 14, however, clearly provides for the extension of the period of limitation and, therefore, the period contemplated by section 12 and 14 must be added to the period of limitation presented by the Act and if, after this addition, limitation expires on a day

when the court is closed, the suit, appeal or application may be filed on the re-opening day.

Thus the period of limitation should be computed first and, if section 12 or other similar sections permit the exclusion of any period, that period should be added to the prescribed period of limitation and if the total period thus arrived at, expires on a day when the court is closed, section 4 of the Act would come into play.

In a case the suit was decreed on May 25, 1967. The Civil courts closed for the summer vacation on June 2, 1967 and reopened after the vacation on July 3) 1967. The application for copies of the judgment and decree was made on the same date. that is to say on July 3, 1967. Copies were ready and delivered on July 5, 1967 and the appeal was filed on July 6, 1967. It was held that the appeal was barred. *Bhagwan Swarup* v. *Municipal Board Ujhani* A. I. R. 1970 Allahabad 652 (F. B.).

5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

Notes

The general rule is that every suit instituted, appeal preferred or application made after the period prescribed there-

for by the first schedule shall be dismissed. Section 5 is an exception to this general rule and provides for the extension of time in the case of appeals and applications other than execution applications under any of the provisions of Order XXI, C. P. C. when the appellant or applicant, as the case may be, satisfies the court that he had "sufficient cause" for not filing the proceeding within the period prescribed. But mere proof of the existence of sufficient cause for not filing the proceeding within the prescribed period does not, under the section, *ipso facto* compel the court to extend the time. The court has a discretion to admit or refuse to admit the proceeding, even if sufficient cause is shown, as is made clear by the words, "may be admitted" used in the section. Their Lordships of the Privy Council observed in *Brij Inder Singh v. Lala Kaushi Ram*, (A. I. R. 1917 P. C. 156): "All that the section requires in express terms as a condition for the exercise of the discretionary power of admission of an appeal presented after time is sufficient cause for not presenting the appeal within the prescribed period. If such can be shown, the court may in its discretion, which is, of course, a judicial and not an arbitrary discretion, admit the appeal". The existence of sufficient cause for not filing the proceeding in time is thus merely a *condition* that must be satisfied before the court can exercise its power of granting or refusing to grant the extension of time. If the condition is not satisfied, there is no room for the applicability of the discretion. Thus, where no cause has, at all, been shown, that is, where no explanation has been given for filing the proceeding beyond time, there arises no opportunity of considering the sufficiency or otherwise of the reasons for that fact, and there cannot be any room for the exercise of the discretion given by the section. If the condition is satisfied, then the court gets a discretionary power to grant or refuse the prayer for extension of time. But it may, in its discretion, refuse to extend the time even though there may be sufficient cause for the delay. The extension of time is thus a matter of concession or indulgence to the applicant and cannot be claimed by him as a matter of absolute right.

Oral order for removing defects made in absence of respondents whether can be considered to be an order condoning

delay.—An appeal was filed without a certified copy of the judgment and order appealed against and there were other defects also in the memorandum of appeal. The appellate court granted time for removal of defects more than once. It was contended that as the court had granted time on several occasions for removing defects and then the certified copy of the judgment and order was filed within that time, it ought to be taken that limitation, if any, had been condoned, and no written order condoning the delay in filing the appeal was necessary. *Held*, this contention could not be accepted. A valuable right had accrued to the respondent to the appeal and by an order which was not explicit in the matter made in the absence of the respondents could not be taken to be an order by which the limitation had been condoned impliedly. *Mansur Ali* v. *Mohd. Usman* A. I. R. 1973 Pat. 178.

"Within such period"

It would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of S. 5. The context seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. In all cases falling under S. 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. Even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by S. 5. If sufficient cause is not proved nothing further has to be done ; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its *bona fides* may fall for consideration ; but the scope of the enquiry while exercis-

ing the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. (*Ramlal* v. *Reva Coalfields Ltd.*, (1961) 11 S. C. J. 556 : 1961 A. L. J. 815).

Benefit of section when available

It is now well settled that even where a party is able to show that it had sufficient cause for not making the application within time still it is discretionary with the court whether to extend the period of limitation or not. This discretion has to be exercised not in arbitrary, vague or fanciful manner. It has to be exercised on certain well recognised judicial principles. The fundamental rule which has been universally accepted as rule guiding Courts discretion in this respect is to see whether the party claiming indulgence has been reasonably diligent in prosecuting his application, and that he has acted in a *bona fide* manner. *Ibrahim* v. *Deputy Director of Consolidation* A. I. R. 1973 Allah. 378.

Applicability of Section

The section applies only to—

(1) Appeals.

(2) Applications other than execution applications under any of the provisions of Order 21, C. P. C.

It means the section is not applicable to suits or applications under Order 21, C. P. C.

Application for restoration of Appeal.—Section 5 applies to an application governed by Article 122 of the Limitation Act for restoration of an appeal. If sufficient cause is shown, limitation can be condoned. *Smt. Bimla Devi* v. *Patitapaban Dev* A. I. R. 1973 Orissa 169 (F. B.).

Delay in making deposit ordered by Court under U. P. Rent Control Act.—Section 5 is applicable only to delay in filing of appeals and applications and not to delay in making

a deposit ordered by Court under the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. *Shri Chand Gupta* v. *Madan Lal* 1973 A. L. J. 635.

Election petition under Representation of People Act.—Provisions of section 5 do not govern the filing of election petitions or their trial. *Hukumdev Narain Yadav* v. *Lalit Narain Mishra* A. I. R. 1974 S. C. 480.

Appellate Authority under Kerala Buildings (Lease & Rent Control) Act —The Limitation Act, 1963 applies only to courts and prescribes periods of limitations in respect of suits, appeals and applications filed only in Courts. Section 18 of the Kerala Buildings (Lease & Rent Control) Act is clear that the appellate authority constituted under it is not a Court but only an authority *persona designata.* Therefore, section 5 of the Limitation Act cannot apply to proceedings before the appellate authority under the Kerala Rent Control Act. *Jokkim Fernadez* v. *Amina Kunhi Umma* A. I. R. 1974 Kerala 162 (F. B.). See also *Nityanand* v. *Life Insurance Corporation of India* A. I. R. 1970 S. C. 209 and *Municipal Council* v. *Presidency Officer* A. I. R. 1969 S. C. 1335; *Nagreddy* v. *Khandappa* A. I. R. 1970 Mysore 166.

Criminal Appeal

This section applies to criminal appeals, and a criminal appellate court has power to excuse delay and admit a time barred appeal, if the court is satisfied that the appellant had sufficient reason for not preferring the appeal within the prescribed period.

The use of the words "after the prescribed period" in section 5 indicates that section 5 would apply by virtue of its own force to matters for which limitation is presented by the Limitation Act. Art 131 of the Limitation Act prescribes 90 days as the period of limitation for preferring a revision under the Criminal Precedure Code. Section 5, therefore, applies to such application. *Harihar Das* v. *Lokanath* (1970) 36 Cuttack Law Times 1263.

"Sufficient cause"

Proceedings on original side of High Court.—Section 5 applies to proceedings on the original side of the High

Court. Section 5 and the original side rules have to be read together, and if under the provision of the one though not of the other the petitioner has the right to apply for condonation of delay and for admission of the Memorandum of Review, this right ought not to be denied to him. *Krishna Kumar* v. *I. N. Bhan A. I.* R. 1971 Cal. 322.

The expression "sufficient cause" is not defined but it has been held that it must mean a cause which is beyond the control of the party invoking the aid of the section. A cause for delay which, by due care and attention the party could have avoided cannot be a "sufficient cause". The test, therefore, whether a case is sufficient or not is to see whether it could have been avoided by the party by the exercise of due care and attention. A cause of action from the negligence of the party cannot be a sufficient cause. (*Ashutose Bhadra* v. *T. M. Seal* 1954 A. I. R. Cal. 238).

The words "sufficient cause" should receive a liberal construction so as to advance substantial justice, when neither negligence nor inaction nor want of *bona fides* is imputable to the appellant or applicant. (*Krishna* v. *Chattappan* (1889) I. L. R. 13 Mad. 2 9). The decision received the approval of the Supreme Court, in *Dinabandhu Sahu* v. *Tadumani Mangarai* A. I. R. 1954 S. C. 411 ; *Ramlal* v. *Rewa Coal Fields Ltd.* A. I. R. 1962 S. C. 361 and *Sarpanch Lonard Gram Panchayat* v. *Ramgirai*, A. I. R. 1968 S. C. 222, The Court should not apply too exacting a standard of diligence and if the delay, under the circumstances, is not one that can be considered as unreasonable, the court should exercise the discretion under section 5. (*Kamiruddin* v. *Bisnupriya*, A I. R. 1929 Cal. 240). But discretion cannot be exercised arbitrarily or lightly in favour of a party unless he shows good or sufficient cause for it. (*D. Gowda* v. *P. Gowda*, A. I. R. 1955 Mys. 133). In showing the "sufficient cause" for condoning the delay, the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day when the appeal was actually filed. (*Ramlal* v. *Rewa Coal Field Ltd.*, A. I. R. 1962 S. C. 361). Where a petition for condonation of delay in filing appeal contained

no material as to when copies of judgment and decree were applied for and received or when memorandum of appeal was drafted and delivered to a party except a bare statement that copies were received late and due to oversight of agent of the appellant the papers were not sent to the pleader in time, it was held that no 'sufficient cause' was made out to condone that delay.

The following are some of the examples of what is and what is not "sufficient cause" :—

Illness

A mere plea of appellant's illness is not a sufficient cause for not filing an appeal in time unless it is shown that the appellant was utterly disabled to attend to any duty, high fever, attended with delirium by reason of which the applicant was absolutely confined to bed, in consequence of which the application for review was delayed by four days, was a sufficient cause for excusing the delay of those days. (*Gauri Shankar* v. *Kashi Nath*, 1933 A. L. J. 1931 : A. I. R. 1934 All 367). A delay of only nine days on account of abortion and consequent haemorrhage deserves to be condoned. (*Lucy* v. *Francis Furtado*, A. I. R. 1954 Mays. 86).

An appeal filed beyond time and admitted *ex parte* after condoning the delay does not debar the other party from agitating the question of limitation at the time of hearing. It is open to the court to reopen the question and decide whether there is sufficient cause for admitting the appeal. *Fulbaranessa* v. *Assam Board of Revenue* A. I. R. 1974 Gauhati 50. The leading case on this point is *Krishnasami* v. *Ramasami* A. I. R. 1917 P. C. 179 where their Lordship of the Privy Council observed :

"It has been argued that the admission of the appeal by Sankaran Nair, J., was final and that the Division Bench had no jurisdiction at the hearing of the appeal to reconsider the question whether the delay was excusable. But this order of admission was made not only in the absence of Ramaswamy Chettiar, the contesting respondent, but without notice to him. And yet in term it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from

from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit term of an order like the present that, though unqualified in expression, it should be open to reconsideration at the instance of the parts prejudicially affected; and this view is sanctioned by the practice of the court in India".

A litigant who has acquiesced in the judgment of a court by not preferring appeal within the stipulated time cannot make up and prefer the appeal after seeing the Supreme Court judgment in his favour it is not a fit case to excuse the delay. *V. V. Kudra* v. *Employees' State Insurance Corporation.*, A. I. R. 1972 Mysore 204.

A court cannot, on equitable grounds, enlarge the time allowed by law, or postpone its operation or introduce exceptions not recognized by it. *State of Rajasthan* v. *Ramnath*, A. I. R. 1972 Raj. 161.

Illiteracy of applicant.—In order to invoke the provisions of section 5 for condoning delay and extending time for filing a copy of the decree, cogent reasons for exercise of the discretion must be made out. The fact that the appellant was illiterate was not a sufficient reason to condone the delay. *Badrinath* v. *Hari Bhagat*, A. I. R. Jammu and Kashmir 412.

Mistaken legal advice

A mistaken advice given by a legal practitioner may, in the circumstances of a particular case, give rise to sufficient cause within the meaning of section 5, though there is certainly no general doctrine which saves parties from the results of wrong advice. (*Rajendra Bahadur* v. *Rajeshwav Bali*, A.I.R. 1937 P. C. 276).

Quoting this decision of the Privy Council the Hon'ble Supreme Court in the case of *State of West Bengal* v. *The Administrator, Howrah Municipality* A. I. R. 1972 S. C. 749 came to the conclusion that "if a party had acted in a particular manner on a wrong advice given by his Legal Adviser, he cannot be held guilty of negligence so as to disentitle the

party to plead sufficient cause under section 5 of the Limitation Act.

It has been firmly established that a *bona fide* mistake committed by a *counsel* or *his clerk* would constitute sufficient cause entitling a party to claim condonation of delay provided that no negligence, nor inaction, nor want of *bona fides* is imputable to a party. See *Lala Mata Din* v. *A. Narayanan*, A. I. R. 1970 S. C. 1953 ; *State of West Bengal* v. *The Administrator, Howrah Municipality* (Supra) ; *Hanuman Dass* v. *Prithvinath* A. I. R. 1956 Allah. 677 (D. B.) ; *Ramji Dass* v. *Kumara Kalathi Mudali* A. I. R. 1932 Madras 142 ; *Rangumma* v. *Honappa* A. I. R. 1955 Mysore 64 and *Punjab University* v. *Acharya Swami Ganesh* A. I. R. 1972 S. C. 1973. In this case of *Punjab University* (*Supra*) the appeal filed was late by two days. The delay was due to the miscalculation made by the counsel for the appellant. The counsel filed an affidavit wherein he stated that the appeal was filed two days after the period of limitation entirely because of his mistake. That was held to be a good ground by their Lordship of the Supreme Court in condoning the delay in filing the appeal as it was held to be not a case of negligence but a *bona fide* mistake.

Mistaken legal advice as to procedure to be adopted by the client, based upon a *bona fide* and honest, but erroneous opinion as to law which is neither clear nor settled, relying upon which the appeal is filed beyond time, can be shown and accepted as 'sufficient cause' within the meaning of Section 5 for not presenting the appeal in time. *State of Orissa* v. *Govind Choudhary* (1971) 1 C. W. R. 754.

Not every mistake of a lawyer would attract the provisions of Section 5. If the mistake of the legal adviser is the result of negligence, it cannot afford a ground for giving the benefit of Section 5. *Secretary Govt. of Orissa* v. *Ram Krishna*, A. I. R. 1963 Orissa 19 ; *Rajputana Trading Co. Pvt. Ltd.* v. *Malaya Trading Agency* A. I. R. 1971 Cal. 313.

Where there was delay in filing the appeal because both the appellant and his counsel did not act carefully, it cannot

be said that there is sufficient cause to condone the delay. A. I. R. 1971 Gou. 38.

The mere fact that a party or litigant relied upon the opinion of his lawyer or legal adviser cannot in itself be regarded as sufficient cause for purposes of section 5. Such conduct on the part of a litigant can be regarded as amounting to sufficient cause for purposes of the said section only if the opinion or advice of his lawyer on which he acted had been arrived at by the lawyer after the exercise of due diligence. Where the law is in doubt or the position upon statutory provisions or decisions of courts may be capable of yielding more than one view in a given situation, one of such views taken by a lawyer is not considered to be unreasonable and therefore can be regarded as sufficient cause if acted upon by his client.

Where, however, the law is quite clear or the correct legal position can be ascertained by or upon a reasonable diligent study of relevant provisions, a demonstrably wrong opinion entertained by a lawyer and tendered to a party can never be regarded as affording sufficient reason within the meaning of section 5.

The liberal interpretation of the words "sufficient cause", it may be noted, is to be resorted to for the purpose of advancing substantial justice, when no negligence, nor inaction nor want of *bona fides* is imputable to the appellant. *Kundawadiah* v. *Special Land Acquisition Offiecr* (1969) 2 Mysore Law Journal 469.

Where copies had already been given to the lawyer in time but they were mislaid and were found out 5 days after search and the appellant who was a businessman returned from outstation only on the last day of limitation and there was delay of 6 days in filing appeal, *held* that there was sufficient cause and the delay could be condoned. *Banwarilal Boid* v. *P. Neelakantham* A. I. R. 1970 Orrisa 53.

In *G. Abdul Shukur* v. *The Union of India*, A. I. R. 1973 A. P. 118 but for the advice given by the lawyer the petitioner would not have resorted to the wrong remedy and

he would have filed the appeal in time and the delay would not have occurred. *Held* that the wrong advice given by petitioner's advocate was a sufficient ground for condoning the delay.

Delay due to conflicting decisions misleading the party in filing appeal is good ground for condoning delay. *Bhagwan Swarup* v. *Municipal Board, Ujhani* A. I. R. 1970 Allah. 652 (F.) ; *State of Bihar* v. *Mohd. Ismail* A. I. R. 1966 Pat. 1 (F. B.) ; *Union of India* v. *Makhan Lal Dey* 76 C. W. N. 868 ; *Krishnappa* v. *Ramchandra* A. I. R. 1973 Mysore 234.

An applicant cannot plead for not presenting the Memorandun of Review in time because he was misled by a conflict of decisions of different High Courts in computing limitation under Art. 124 when the matter has been settled by a decision of the Supreme Court. That will not be sufficient cause for the delay. *Krishna Kumar* v. *J. N. Bhan* A. I. R. 1971 Cal. 322.

A mistake on the part of the counsel, if made *bona fide* is a sufficient cause. The mistake must be such as may be made by a pleader of experience. If the mistake is not *bona fide*, or if the counsel has not acted carefully, the delay will not be excused. In cases where a suitor has consulted a legal adviser and such advice is either negligently given or as a result of gross ignorance or want of legal skill he cannot come to court and ask for indulgence on that ground. (*Raj Malik* v. *Susanta Sen*, A.I.R. 1951 Simla 209). *See* also *Badri Narayan* v. *Chandanmal*, A.I.R. 1950 Rajasthan 2.

The statutory principle seems to be that a lawyer's mistake may, in deserving cases, merit condonation but not of a clerk. Where a question of law is involved, a muffasal pleader's clerk can hardly be expected to give competent advice and if a party relies upon his advice and does not seek the advice of the lawyer himself, he cannot ordinarily be credited with good faith.

Where a vakil or vakil's clerk was unaware of the existence of a specific article i. e., Article 170 of the Limitation

Act in regard to pauper appeals it amounts patently to ignorance of law. Ignorance of law can never be an excuse while a mere mistake sometimes may claim condonation. (*Potta Sitharamaiah* v. *Virraju*, A.I.R. 1959 Andhra Pradesh 507).

Mistaken view of Law

Ignorance of law is no excuse and is not a sufficient cause for condonation. (*Hadi Ali* v. *Amir Bux*, 1950 R. D. 142). If, however, the mistake is honest and induced by erroneous advice of a competent lawyer it will be sufficient cause. (*Narsinga Charan Nandy* v *Trigunand Jhakhoware*, (1938) I.L.R. 17 Pat. 507). But where the law is in an unsettled state a mistake by the lawyer can be accepted as sufficient cause but where the matter is beyond dispute, a statement that the lawyer did not know the law cannot be accepted, as sufficient excuse under Sec. 5. (*Bijanlata Bassak* v. *B. C. Das*, A.I.R. 1955 Cal. 578). Only in cases where (1) the advice was given by a skilled or competent person, (2) the lawyer who gave the opinion exercised reasonable care, (3) the view taken by the lawyer was such as could have been entertained by a competent person exercising reasonable skill, (4) there was no negligence or want of reasonable skill on the part of the lawyer concerned who gave the advice—would a litigant be entitled to get the benefit of Sec. 5. But mistaken advice of a lawyer given negligently and without due care is not a sufficient cause for condonation of delay under Sec. 5. (*The Rajputana Trading Co. Private Ltd.* v. *Malaya Trading Agency*, A.I.R. 1971 Cal. 313).

Where a very able counsel of long standing at the bar gives an opinion contrary to the latest and widely known pronouncement of law by Supreme Court & High Court, the mistake cannot be treated as *bona fide* and the counsel must be held to have negligently and his wrong advice cannot be treated as sufficient cause for condoning the delay. *Banwari Lal & Sons Pvt. Ltd.* v. *Union of India* A.I.R. 1973 Delhi 24.

Where the exact legal position emerging out of the previous rulings of the court and the possible effect of the Explanation to section 12 of the Limitation Act, 1963 thereon was a matter open to more views than one, it was

held that it was sufficient ground to condone the delay, *Krishnappa Ramasa Walvekar* v. *Ramchandrasa Ramasa Walvekar* A.I.R. 1973 Mysore 234.

It is true that a party is not completely absolved of his responsibility and does not automatically become entitled to the protection under section 5 of the Limitation Act merely by entrusting his work to a senior Advocate, but if the view taken by the legal adviser is quite a reasonable view, even though mistaken, and the advice could be given by any senior lawyer in spite of due care and caution, then only the party is entitled to the benefit of the provisions of section 5 and this must be determined with reference to the facts and circumstances of each particular case. *Harihar Das* v. *Lokanath Sahu* (1970) 16 Cuttack Law Times 1263.

Honest difference of opinion between Advocate-General and Government officers.

There was a difference of opinion between the Advocate-General and the Government officers on the question of filing an application for leave to appeal. The Government was for a time swayed by the opinion of the Advocate-General, but again reviewed the matter and imposed their decision to file an application for leave to appeal on the Advocate-General. The mistake, if any, committed either by the Advocate-General or by an officer of the Government in deciding, at the first instance, not to file the appeal, was a *bona fide* one, and not a mere device to cover an ulterior purpose, such as laches on the part of the Government or an attempt to save limitation in an underhand way.

The fact that Government applied for certified copy of the judgment within six days after its delivery is a clear indication of the diligence and not of any laches. There was thus "sufficient cause" for not making the application for leave to appeal within the prescribed period of limitation provided therefor. *Collector of Cuttack* v. *Ramanbhai Patel* (1972) 38 Cuttack Law Times 933.

Absence of evidence of delibrate laches and reasons for delay not expressly stated

In a case a person as old as 60 years was absolutely

confined to bed for about 3 and 1/2 months. He took only three days to gain strength to be able to travel from his village to town to file the petition. It was *held* that in the absence of proof of any deliberate laches on his part the explanation for the delay was self-evident from the above facts proved in the case, though it had not been expressly stated and condonation of delay was justified. *Dhoba Naik* v. *Sabi Dei* A. I. R. 1973 Orissa 182.

Referring incorrect statute reference book.

The counsel engaged to file an appeal consulted the Rajasthan High Court Rules as amended up to 1963 and a copy of the High Court Rules published in 1967 Edition of All Rajasthan Local Acts, volume V and found that Rule 134 contained the period of limitation for special appeals as 60 days and he informed the client accordingly. The fact was that originally the period of limitation for special appeals was 60 days and it was altered to 30 days on June 17, 1965. But the copy of the All Rajasthan Local Acts published in 1967 contained Rule 134 without including the amendment. *Held* that the counsel had counsulted a reference book and his action could not be characterised as one without due care and caution. The counsel was only guilty of regulating his watch by a wrong clock. There was sufficient cause for condoning the delay of four days in filing the appeal. *Kusum Chand* v. *Kanhaiyalal*, A. I. R. 1974 Rajasthan 73.

Bona fide mistake in prosecuting appeal in wrong Court

The first appeal against the judgment and decree of the Trial Court lay to the High Court but under some *bona fide* mistake the appellant filed the appeal before the District Judge who also did not take any note of this wrong institution of the appeal before him. The appellant filed the second appeal before the High Court on the same mistaken assumption. When the mistake was pointed out, the second appeal was converted into a first appeal and condonation of delay was sought. *Held*, that the appellant, under the entire circumstances of the case, had sufficient cause for filing the first appeal in the High Court and he was entitled to the deduction of the period during which he prosecuted

the appeal before the District Judge. *Balbir Singh* v. *Bogh Singh* A.I.R. 1974 S. C. 650.

Mistake of lawyer due to unsettled state of law

Delay arising out of mistake due to unsettled position of law specially where the point is not covered by any authority can be condoned under section 5. *Union of India* v. *Mohanlal Day* 76 Calculta Weekly Notes 868.

Poverty, Minority and Purda

Neither the proverty of the appellant nor the fact that she is a *pardanashin* lady would constitute a sufficient cause. The infants also do not stand on any higher footing if their guardians are negligent or careless ; and any delay caused by their guardians will not be excused as such. But Courts are less rigid in enforcing the bar of limitation and somewhat liberal in exercising power to condone delay when interests of minors are involved. This does not mean that such cases are exempt from the operation of the law of limitation but does indicate the need to make a difference in considering delay which affects minors and adults. (*D. Gowda* v. *P. Gowda*, A.I.R. 1955 Mys. 133).

Imprisonment

Imprisonment in a criminal jail may be a sufficient cause and the time spent in jail may be deducted.

Defective Vakalatnama

Where a party intending to engage a pleader executes a *vakalatnama* but by a pure mistake omits to mention his name in the said *vakalatnama* and the pleader in his turn fails to endorse his acceptance and the mistakes are due to pure inadvertence or accident and do not proceed from any dishonest intention, there is sufficient cause for accepting a fresh *vakalatnama* complete in every respect after the expiry of the period of limitation for the appeal. (*Mohd Qamar Shah Khan* v. *Mohd. Salamat Ali Khan*, 1930 A.L.J. 394).

Incomplete appeal presented beyond limitation

Section 5 implies that when the court is requested to admit the appeal after the expiry of the prescribed period,

the appeal is otherwise complete and competent and it is only the delay in preferring it on account of sufficient cause which is to be excused or condoned. Where the appeal when presented beyond the limitation period is incomplete (as for example where it is not accompanied by a copy of the decree appealed from) it is not competent for the Court to pass an order admitting the appeal under S. 5. (*Shamlal Thakur Das* v. *Punjab National Bank Ltd.*, A. I. R. 1960 Punjab 370).

Delay in filing application for leave to appeal to Supreme Court.—Filing of review petition against the dismissal of writ appeal, would not constitute sufficient cause for condoning delay in filing application for leave to appeal to Supreme Court. *A Subhash Chandra Bose* v. *The Court of Judicial First Class Magistrate, Anantapur* A. I. R. 1974 Andhra Pradesh 173.

Each day's delay to be explained.—It is well-settled that in order to avail of the benefits of section 5, the party at default must satisfy the court that it had sufficient cause for not making the requisite application right up to the date on which the application is presented. In other words, the party at default must satisfactorily explain or account for each day's delay in making the application. Unless the court is satisfied in respect of each day's delay in making the application, it has no authority in law to condone the delay under the provisions of section 5. Reference in this connection might usefully be made to *Sitaram Ram Charan* v. *M. N. Nagrashana* A. I. R. 1960 S. C. 260 where their Lordships observed thus :—

"It cannot be disputed that in dealing with the question of condoning delay under section 5 of the Limitation Act the party has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time ; and this has always been understood to mean that the explanation has to cover the whole of the period of delay....."

To the same effect is the decision of their Lordships in *Ramlal* v. *Rewa Coal Fields Ltd.* A. I. R. 1962 S. C. 361. In this case their Lordships observed as follows :—

"...In other words, in all cases falling under section 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed ..."

See Mst. Sundari v. *Sakal Sahni* A. I. R. 1973 Patna 150 and also *Krishna Kumar* v. *J. N. Bhan* A. I. R. 1971 Cal. 322; *Tengri Koiri* v. *Jhagru Koiri* 1969 Bihar Law Journal Reports 890.

Delay due to poverty.—The appellant could not collect certified copy for about 3 months after it was ready to his knowledge because he had to arrange for money to pay the costs of the copy. *Held* that the party was not entitled to condonation of delay or special latitude. *Mahant Gurumukh Singh* v. *State of Punjab* A. I. R. 1970 Punjab 282 (F. B.).

Delay in filing appeal by Government

The law of limitation operates equally for or against a private individual as also a Government. No special indulgence can be shown to the Government which in similar circumstances is not to be shown to an individual suitor. If it is felt that the ministries delay matters so much that the periods of limitation already prescribed in the Limitation Act are not long enough for the Government or its agents, then the better course is to obtain amendment of the law through the Legislature rather than to make an application to the Court invoking its power under S. 5 of the Limitation Act. (*Union of India* v. *Shri Ram Kanwar*, A. I. R. 1958 Punj. 365 and also A. I. R. 1962 Him. Pra. 16).

Government.

It is well-settled by the authority of the highest court of the land that the expression "sufficient cause" within meaning of section 5 cannot be construed too liberally merely because

the party in default is Government. The learned Judge Vaidialingam, J. in *State of W. B.* v. *Howrah Municipality* A. I. R. 1972 S. C. 749 ".....the expression "sufficient cause" cannot be construed too liberally, merely because the party in default is the Government. It is no doubt true that whether it is Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction. But it cannot also be gainsaid that the same consideration that will be shown by courts to a private party when he claims the protection of Section 5 should also be available to the State." It has also been held by their Lordships of the Supreme Court in *Union of India* v. *Ram Charan* A. I. R. 1964 S. C. 215 that there is no question of construing the expression "sufficient cause" liberally because the party in default is the Government. See also *Special Deputy Collector Land Acquisition (Industries) Hyderabad* v. *Nawab Turab Yar Jung* A. I. R. 1973 A. P. 43.

The law of limitation operates equally for or against a private individual as also a Government. No special indulgence can be shown to the Government which in similar circumstances is not to be shown to an individual suitor. One has to take a practical view of the working of Government without being unduly indulgent to the slow motion processes of its wheels. *State* v. *Krishna Kurup* A. I. R. 1971 Kerala 211. Requirement of diligence cannot be different in case of Government than in case of private individual. *Special Tahsildar* v. *Madhavi* 1969 Kerala L. R. 676; *Keshav Prasad* v. *State of Rajasthan* A. I. R. 1967 Rajasthan 24.

Though the Limitation Act does not make any distinction between Government and private individual in the matter of condonation of delay under Section 5, yet its case can be said to be different from that of an individual who has to make up his own mind and who can normally be presumed to be aware of or familiar with all the relevant factors of the case. The Government on the other hand has to take into consideration the public interest involved and so, long time may be required for enquiry and consideration before taking a final decision in the matter. However, the real difficulty arises in their application to individual cases. It

must at the same time be emphasised that the Government officers charged with the double duty of taking the decision and instituting the proceedings in courts must not carry the impression that they can bank on the indulgence of courts even if they take their own time in processing the papers or making up their mind. The Court would certainly not put up with any laches or smug nonchalance on the part of Government officials in the matter of Court proceedings, just as it would not do in the case of private litigant. *Union of India* v. *Chingangbom Indra* A. I. R. 1970 Manipur 32. Mere delay raises a presumption of laches in the case of an individual ; but no such presumption is raised in the case of Government ; *State of Rajasthan* v. *Rikhab Chand*, A. I. R. 1966 Rajasthan 213.

Full

6. Legal disability.—(1) Where a person entiled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application, within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.

(2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the

same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he repesents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

(5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation.—For the purposes of this section, 'minor' includes child in the womb.

Notes

Section 6 is one of the provisions which extends the period of limitation laid down by the schedule. The ground on which the extension is given is the disability of the person entitled to sue or apply. But the section does not contain the entire law on the subject. It enumerates the kinds of disabilities on account of which limitation will be extended. But, the circumstances under which and the extent to which limitation will be extended on such ground are dealt with not only in this section but also in sections 7 and 8. Thus the three sections *viz.*, sections 6, 7 and 8 together constitute one unit and are supplementary to each other and not mutually exclusive.

Section 6 excuses an *insane person*, *minor* and an *idiot* to file a suit or make an application for the execution of a decree within the time prescribed by law and enables him to file the suit or make an application after the disability has ceased counting the period of time from the date on which the disability ceased. If one disability supervenes

on another disability or one disability is followed by another without leaving a gap the suit or application for execution may be filed after both disabilities have ceased to exist. If the disability or disabilities continue till the person's death then the representative of the deceased on whom the title devolves is allowed to file a suit or make an application for execution within the time allowed by law counting it from the death of the person entitled. The mere fact that there is a guardian for the person under disability does not deprive such person of the indulgence granted by Sec. 6. (*Radhakishan* v. *Kalicharan* 1957 M. P. C. 174; *Satyendra Nath Sinha* v. *Pitamber Singh*, A. I. R. 1938 Pat 92.). The reason why persons under disability are not subjected to the ordinary rule of limitation is that the law considerst them incapable of forming a proper judgment as to bringing suits or otherwise managing their own affairs. It should be clearly understood that no disqualification other than those mentioned in the section, *viz.*, minority, insanity or idiocy can save limitation under the Act.

This section applies only to suits (suits other than pre-emption suits) and applications for execution of decrees for which period of limitation is mentioned in the third column of the schedule. *It does not apply to appeals.* Therefore a minor or an insane appellant cannot take advantage of this section.

The conditions for the applicability of this section are :—

1. The person entitled to sue or apply for execution of decree must be under a disability. The disability is confined only to minority, insanity and idiocy.

2. The disability must be of a person entitled to sue or apply for execution. A plaintiff himself under no disability is not entitled to the benefit of the section merely because the defendant is under a disability. This section only applies to suits etc., brought by and not against persons under disability.

3. The disability must exist at the time from which the period of limitation is to be reckoned. Therefore a disability which supervenes after the commencement of limitation is no ground for extension of limitation under this section.

4. The proceeding in question must be a suit or an application for the execution of a decree.

5. The period of limitation for the proceeding must be specified in the third column of the schedule.

"Suit".—The word "suit" has not been defined in the Limitation Act but Sec. 2 (l) states that "suit" does not include an appeal or an application. Sec. 2 (1) only excludes an appeal or an application. The word "suit" as contemplated in the provisions of the Limitation Act has a wider meaning and includes any legal proceedings commenced by one person against another in order to enforce any civil right. An application under Sec. 110-A, Motor Vehicles Act was held to fall within the scope of the word "suit" used in Sec. 6, Limitation Act. (*Hayatkhan* v. *Mangilal* A. I. R. 1971 M. P. 140).

Claims under Motor Vehicles Act.—Section 6 applies to claims for compensation under the Motor Vehicles Act, 1939. The fact, therefore, that the claimants were minors at the time of the expiry of the period under the Motor Vehicles Act, the claim could be made after they attained majority as provided in S. 6 of the Limitation Act and their minority would be a sufficient cause for extension of the period under the Motor Vehicles Act. *Bishan Dass* v. *Ramesh* 1971 Accidents Claims Journal 203.

A person was killed in a motor accident leaving behind a widow and two minor children All of them were entitled to prefer claims for compensation. As their claims were separate and not joint, the widow could not be regarded as having competent to give a valid discharge of the claims of the minors within the meaning of section. 7 of the Limitation Act. *Held*, that the provisions of section 7 were not attracted and the claims made by the minors after they became majors would be in time as time would not run against them till then. *Bishen Dass* v. *Rameh* (*supra*).

Transferee of person under disability

The special provision of section 6 confers a purely personal exemption on a certain class of persons and the exemp-

tion as such cannot be taken advantage of by the transferee from the person under disability. *Pena Parejan Ambalam* v. *Venkatachalam Chettiar*, (1960) 1 Madras Law Journal 346. However, when a person entitled to the benefit of section 6 transfers .property to ·another, though the 'transferee himself may not be entitled to the benefit of that section, a suit could be filed by the transferor and the transferee and such a suit would not be barred though ultimately the benefit of the decision in the suit would go to the transferee. *Thyammal* v. *Rangaswami Reddi*, A. I. R. 1956 Mad. 15. See also A. I. R. 1960 Orissa 151.

Minority.—'Minor' means a person who has not attained the age of majority, *i. e.*, who has not completed the age of 18 years and, in case of a minor of whose person or property or both, a guardian has been appointed, minority lasts till the end of 21 years.

Child in mother's womb.—For the computation of age the starting point is the date of birth, but the law nowhere provides that the period spent by a child in the womb is not to be regarded as a period of minority. *Audhesh Singh* v. *Rajeshwar Singh*, A.I.R. 1951 All. 630. A child in the womb of his mother at the date of the alienation of the joint family property by his Hindu father is a person in existence and minor for purposes of section 6 of the Act, and is accordingly entitled to take advantage of that section, and to sue within three years of attaining majority to set aside an alienation by his father. *Ranganatha Reddy* v. *Ramaswami Mudaliar*, A.I.R. 1935 Mad. 839 F. B. The Bombay High Court also has taken the same view in A.I.R. 1948 Bom. 150, but a contrary view has been taken by the Lahore High Court. *Muhammad Khan* v. *Ahmad Khan*, (1928) 10 Lah. 713. This controversy has now been set at rest by the Explanation to section 6 which expressly provides that a minor includes a child in the womb.

An idiot.—An *idiot* is a person who, by a perpetual infirmity from his birth, has been without understanding.

An insane.—An *insane* is a person who does not conceive, judge or reason as the normal man.

Sub-section (5).—There was a conflict of decisions under

the old Act of 1908 on the question whether when a person under disability dies, after the disability ceases, but within the time allowed to him by law to institute a suit, his legal representative can take advantage of the extended period to the same extent as in the case where the disability of a person continues upto his death. Sub-sec. (5) of sec. 6 has resolved this conflict by providing that where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Burden of proof.—The burden of proving that a suit or application for execution is saved from the bar of limitation by virtue of the provisions of this section is on the person who relies on such provisions. Thus if a minor claims the benefit of this section, it is for him to establish affirmatively and clearly that he is under age at the time of institution of the suit.

Computation of period

In computing the period of limitation for a minor, the date on which he attains majority must be excluded from calculation. The minor when bringing a suit after attaining majority is also entitled to the benefit of Sec. 4. Therefore, if on the last day after three years from the date when the minor attained majority, when he ought to have filed a suit, the court is closed, he is entitled to the privilege of Sec. 4 and can file his suit on the reopening day. (*Naganna* v. *Krishnamurthy*, A. I. R. 1932 Mad. 739).

7. Disability of one of several persons.—Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all ; but, where no such discharge can be given, time will not run as against any of them until one of them becomes

capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I.—This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Explanation II.—For the purposes of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

Notes

Section 7 is a supplement to section 6. It enacts that where the legal relation to each other of several persons who are jointly entitled to institute a suit or file an application for execution is such, that one of them who is free from disability can give a full discharge of the whole claim or debt without waiting for the concurrence of others whether those others are or are not free from disability, then the minority, insanity or idiocy will not entitle him or his co-plaintiffs to the extension of any time under section 6. The peculiar feature about the section is that limitation under it is extended or not with reference to the entire body of persons jointly entitled to sue or make an application for execution of a decree The extension of limitation does not take place with reference to the person under disability alone. The first part of the section provides that if a discharge can be given by *one of* several joint creditors or claimants who is free from disability without the concurrence of his other joint creditors or claimants who are under disability, then there is no extension of limitation and the ordinary period of limitation alone applies to all the joint creditors or claimants including those who may be under disability. The second part of the section provides that if such a discharge cannot be given without the concurrence of the person or persons under disability,

then, limitation will be extended with reference to *all* the joint creditors or claimants and not only with reference to the person under disability.

The principle of this section is that if there are some persons in existence who are adults and who could have safeguarded the common rights of themselves and of others similarly situated, the failure of the persons who are *sui juris* to litigate the right will start the cause of action not only against themselves but also against persons in similar circumstances. (*Varamma* v. *Gopaladasyya*, A. I. R. 1919 Mad. 911).

The disability contemplated by this section is the disability on account of the minority, insanity or idiocy of the person entitled to institute a suit or make an application for the execution of a decree during the relevant period. Even if a petition filed by the judgment-debtor under local Act has the effect of staying the execution of the decree, the resultant disability of the decree-holder cannot be said to be a disability falling under Sec. 7. (*A. K. Vasu* v. *Krishna Kurup*, A. I. R. 1954 Trav. Cochin 237).

This section, like the preceding section 6, is confined to suits and applications for execution of decrees by persons under disability. *It does not apply to appeals.* This section also does not apply to enforce rights of pre-emption as pre-emption suits also have been specifically exempted from the purview of sections 6 and 7.

Explanation I.—The use of the word 'discharge' in section 7 of the old Act of 1908 had given room for the argument that the section applied only to money claims such as debts but did not extend to other rights such as the right to bring a suit impugning an alienation. All the courts, however, adopted a liberal interpretation of the word as including not only money claims but also other rights of the plaintiffs including rights in immovable property. This position has now been made clear by the addition of Explanation I in the present Act which specifically provides that this section applies to a discharge from every kind of liability, including a liability in respect of any immovable property.

Co-partners.—In partnership every partner over and

above being the owner of the partnership business is the agent of every other partner and as such can give a valid discharge for a claim or debt of partnership. So is the case with joint-executors.

Example.—*A* incurs a debt to a firm of which *E*, *F* and *G* are partners. *E* and *F* are insane and *G* a minor. From when would time begin to run against them ?

The debt, being due to a firm, is of such a nature that discharge is capable of being given by any of the partners ; for the rule is that one partner can give a discharge in respect of a due debt to all the partners. But all of them being under disability at the time the debt is incurred none of them is in a position at such time to exercise his right of giving a discharge. The limitation shall run from the time when the disability of one of the partners comes to an end and he becomes capable of giving a discharge on behalf of all the partners.

Example.—*A* incurs a debt to a firm of which *B*, *C* and *D* are partners. *B* is insane, and *C* is a minor. *D* can give a discharge of the debt without the concurrence of *B* and *C*. When time would begin to run against *B*, *C* and *D* ?

Every partner being an agent of every other partner for purposes of the firm's business can give a valid discharge for debts of partnership. Here *B* and *C* are under disability and cannot give a valid discharge in respect of debt due to the firm. But *D* can give a discharge without the concurrence of *B* and *C*. Hence time would run against all of them and they would not be entitled to any extension of time.

Manager of a Joint Hindu family.—The manager of a Joint Hindu Mitakshara family can give a valid discharge without the concurrence of other members of the family only if he is in management of the joint family property. If the manager is not in possession of any property of the family or when the family does not possess any property, the manager it appears, cannot give a valid discharge.

8. Special exceptions.—Nothing in section 6 or in section 7 applies to suits to enforce rights of

pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.

Notes

The first part of section 8 lays down that suits for pre-emption are not governed by sections 6 and 7 of the Act and inspite of the disability, they must be proceeded with and no extension of time will be given on account of the disability of the plaintiff. The second portion of the section says that a person under disability may sue after the cessation of the disability within the same period as he would otherwise have been allowed under the schedule but in no case can the period be extended to anything beyond 3 years from the cessation of the disability. It is not to be understood that a person under disability be entitled to the full period of limitation prescribed for a suit or application, computed from the date of the cessation of the disability. The law allows only the prescribed period of limitation computed from the cessation of the disability provided that if such period exceeds 3 years, he is not entitled to the full period, but only 3 years from the date of the cessation of the disability. But if the ordinary period of limitation computed from the original accrual of the cause of action expires more than three years after the cessation of the disability, such period will be allowed.

Example.—*A*, a reversioner of a Hindu widow is aged 14 when the widow dies. *B*, the widow, has made a gift of immovable property belonging to her husband to her own brother *C*. This gift will hold good during the life-time of *B* (widow) and after her death it will be void. This is so because a widow is only a limited owner and cannot alienate properties. If *A* (reversioner) were major at the time of the widow's death, he would have got 12 years for the recovery of possession of the property alienated by gift by the widow ; but being a minor of 14, he will attain his majority after 4 years. He has, therefore, when he attains his majority (12 − 4) 8 years within which to file the suit and hence no

extension of time to file the suit will be allowed to him under this section.

If *A* were only 7 years of age at the time of the widow's death, then after 1 year more he will become major and when he attains majority he will have only one year left to complete the ordinary period for filing suits for possession prescribed by law. In this case, the provisions of section 8 will add two years more and allow three years in all to file the suit. If A, the reversioner were eight years old at the time of the widow's death, only one year will be added to his two years which he has already got of the period given to him by law. Again, if A were only 5 years of age, this section will give him full three years after he attains majority to file the suit for possession.

Combined effect of sections 6, 7 and 8

The combined effect of sections 6, 7 and 8 may be discussed with reference to the following propositions :—

1. Where the ordinary period of limitation expires more than three years after the cessation of disability. In this case, period cannot be extended under sec. 6 or section 7, as such an extension will be opposed to section 8.

Example.—A right to sue for a hereditary office accrues to A who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given to him under section 6 read with section 8.

2. Where the ordinary period of limitation expires at the end of three years from the cessation of disability. In this case also the period of limitation cannot be extended under section 6 or 7, as such extension would contravene the provisions of section 8.

3. Where the ordinary period of limitation expires before the cessation of disability. In such a case (*a*) if the ordinary period was 3 years or more, the plaintiff has 3 years from the cessation of the disability ; (*b*) if the ordinary period was less than 3 years, the plaintiff has only the ordinary period, and

not a period of three years, computed from the date of the cessation of the disability.

4. Where the ordinary period of limitation expires after the cessation of disability, but before the end of three years from the cessation of disability. In such a case (a) if the ordinary period is 3 years or more, the plaintiff has full 3 years from the cessation of the disability within which he can sue ; (b) if the ordinary period is less than 3 years, the plaintiff has only that ordinary period computed from the cessation of disability and the ordinary period (which is less than 3 years) cannot be enlarged to three years under section 8.

Example.—A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and section 8 an extension of two years will be allowed to him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it :

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

Notes

This section applies not only to suits but to applications as well. This has not been expressly provided in the section.

If at the date on which the cause of action arose the plaintiff was under no *disability*, or *inability*, then time will naturally begin to run against him because there is no reason why the ordinary law should not have full operation. Section 9 says that once time has begun to run, no subsequent

disability or inability to sue can stop its running. This applies to a person himself as well as to his representatives-in-interest after his death.

The section contemplates a case of subsequent and not of initial disability, that is, it contemplates those cases where the disability occurred after the accrual of the cause of action ; whereas cases of initial disability have been provided for by section 6.

Examples

1. A right to sue accrues to *P*, when he is under no disability; but subsequently he becomes insane. Time runs against *P* as usual, from the date of accrual of the right and his *subsequent* disability (*viz.* insanity) is no bar to the running of time.

2. A right to sue accrues to *P* during his minority. After 4 years he becomes major, but subsequently (*i. e.*, sometime after attaining majority) he becomes insane. Time runs against *P* from the date of his attaining majority and his *subsequent* insanity does not stop the running of limitation.

3. (*a*) A right to sue accrues to *P* during his minority. *P* dies only one day after attaining majority and is succeeded by his son *K* who is a minor. Time begins to rum against K from the death of *P* and *K's* minority is of no avail to him because when limitation has once begun to run, it cannot be suspended by any disability *subsequently* arising.

(*b*) A right to sue accrues to A in 1910 and limitation for the suit commences to run against *A* from then. At that time *A* has a minor son. A dies without suing and the right to sue survives to *B*. *B* cannot claim extension of the time on the ground that he was a minor when the right to sue accrued, because, when once time has begun to run, subsequent disability or inability to sue does not stop its running.

(*c*) Two brothers, *A*, major, and *B*, minor, were members of a Joint Hindu Family of which *A* was the Karta and manager. After *A's* death and on attaining majority, *B* sues to recover a debt advanced out of the joint family funds, which had become due in the life-time of *A*, claiming extension of time on the ground of his minority. The suit is barred by

time. The period of limitation began to run from the date on which the loan was advanced by *A*, the Karta of the joint family inasmuch as, being the Karta of the family he represented *B* also and could have in that capacity brought the suit to recover the loan. Hence, subsequent disability of *B* cannot stop the running of time.

"Disability"—Meaning of.—"Disability" is the want of capacity or the legal qualification to act as such as we have seen mentioned in section 6, *viz.*, minority, insanity or idiocy.

"Inability"—Meaning of.—"Inability" means want of physical power or facility to act. Inability assumes that the plaintiff is fully capable to sue ; there is no personal inability to sue but some extraneous circumstances render him unable to file the suit. There is no provision in law to extend the time for a person who is unable to file a suit apart from his disability arising from his being a minor, or an idiot or insane.

Exception.—The proviso to section 9 contains the only exception laid down by the Limitation Act to the general rule that once time begins to run, no subsequent disability or inability to sue can stop it. The proviso lays down that when the administration of an estate has been given to a debtor of the deceased, no time will run against such a debtor until the administration of estate which has been entrusted to him has been finished. In such cases, the law prevents the duty of properly administering the estate to come into conflict with the right of the person to sue for the debt, the hand to give and the hand to receive is the same.

Effect of appeal on running of time.—Under section 9 time for execution of a decree starts running from the date of the trial court decree and there is no provision for arresting the running of limitation thereafter. But the appellate decree is the final decree and the only decree capable of being executed after it has been passed, whether the same reverses, modifies or confirms the decree of the Court from which the appeal was made.

Held that in the instant case the decree of the second appellate court was the only executable decree after the

second appeal had been dismissed, and the decree-holder will have a fresh period of limitation from the date of the decree of the second appellate court. (*Rajendra Nath Tewari* v. *Board of Revenue, U. P. at Allahabad* A. I. R. 1972 Allahabad 417. A. L. J. 424).

Joint effect of sections 6, 7, 8 and 9

The joint effect of this and previous sections is that if advantage is taken of two disabilities, they must so overlap each other as to leave no gap of normal period between them, *i. e.*, period which is free from all disabilities because as soon as such an interval occurs, the time begins to run and subsequent inability or disability is powerless to stop its running. If it is not a continuing disability from the beginning (when the cause of action arose), or if one ceases to be under a disability even for a day, time begins to run against him and subsequent disability of himself or after his death that of his legal representative, will not avail to save limitation. For instance, *A*, a Hindu minor, is under the guardianship of his own mother *Z*. He is deprived of the possession of his family estate by a trespasser *Y*, while he is yet a minor and under the guardianship of his own mother *Z*. While yet a minor, *A* dies and is succeeded to his estate by the mother, the erstwhile (former) guardian. Here, time begins to run against the mother as soon as she succeeds to the property. If the widow subsequently adopts a son who is a minor and who in consequence of the adoption becomes the heir of A, the adopted son cannot claim extension of time.

10. Suits against trustees and their representatives.—Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof or for an account of such property or proceeds, shall be barred by any length of time.

Explanation.—For the purposes of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof.

Notes

The section declares that where a trust has been created *expressly* for some *specific purpose* or object and property has become vested in a trustee upon such trust (either from such person having been originally named as trustee or having become so subsequently by operation of law), the beneficiary (the person, who, for the time being, may be beneficially interested in the trust) may bring a suit against such trustee or his legal representatives to enforce that trust at any distance of time without being barred by the law of limitation. As a result of this section, an apparently fraudulent trustee who has put trust-money into his own pocket cannot escape by reason of lapse of time. The section declares that trust properties shall not be subject to any law of limitation but when trust property finds its way into the hands of an assignee for valuable consideration, the ordinary law of limitation shall apply; and the assignee shall have the same benefit as an ordinary purchaser of property would have. In other words, a person who is beneficially interested in the trust cannot bring a suit to recover the trust property in the hands of an assignee for consideration at any time. He must bring the suit within the prescribed period of limitation. The period of limitation for a suit to recover trust property from the hands of assigns for valuable consideration is prescribed by Art. 48-A in case of movables and by Art. 134, in the case of immovable property.

Example.—*P* created a trust for charitable purposes and delivered possession of certain immovable properties to the trustees for carrying out the trust. The trustees took no steps to carry out the trust for more than 12 years. *P* died in the meanwhile. After 28 years of the creation of the trust P's son

T files a suit against the trustees for re-delivery of the property to him. Is the suit within time ?

Section 10 of the Limitation Act declares that where a trust has been created expressly for some specific purpose or object and property has become vested in a trustee upon such trust, a suit against such trustee or his legal representative to enforce that trust, etc., shall not be barred by any length of time. In view of these provisions of law stated above, the suit of T is within time.

Section 10 applies to express trusts only and does not apply to implied, resulting or constructive trusts as enumerated in Chapter IV of the Indian Trusts Act, 1882. The following conditions must be fulfilled before the benefit of this section can be had :—

1. There must be property which has become vested in a person in trust for a *specific purpose.*

2. The suit must be against such person of his legal representative or assign (not being an assign for valuable consideration).

3. The suit must be for the purpose of following in the hands of such person the trust property or its proceeds or for an account of such property or proceeds.

11. Suits on contracts entered into outside the territories to which the Act extends.—(1) Suits instituted in the territories to which this Act extends on contracts entered into in the State of Jammu and Kashmir or in a foreign country shall be subject to the rules of limitation contained in this act.

(2) No rule of limitation in force in the State of Jammu and Kashmir or in a foreign country shall be a defence to a suit instituted in the said territories on a contract entered into in that State or in a foreign country unless—

(*a*) the rule has extinguished the contract ; and

(*b*) the parties were domiciled in that State or in the foreign country during the period prescribed by such rule.

Notes

It is a general rule of international law that a contract with reference to its form, validity, interpretation and the rights and liabilities of the parties to it, is governed by the *lex loci contractus* (the law of the place where contract is made), while all matters of *procedure* are governed only by *lex fori* (law of the *forum* (country) in which the action is brought). Questions of limitation of actions are governed by the *lex fori* because questions of limitations are essentially matters relating to procedure.

The rules which apply to the case of contract made in one country and put in suit in the court of another country are the following :—

1. The interpretation of the contract is governed by the law of the country where the contract was made.

2. The mode of suing and the time within which the action must be brought is governed by the law of the country where the action is brought.

Thus, the mere fact that a suit on a foreign contract is not barred under the foreign law will not enable the plaintiff to bring the suit on the claim barred in this country, as a person suing in the country should in matters of procedure "take the law as he finds it" here. Even where a suit has been dismissed in a foreign country (solely on the ground of limitation) a fresh suit can be brought in this country within the period prescribed by the Limitation Act. But if the foreign law of limitation has not only extinguished the right of action, *i.e.*, the *remedy* but also the *right* itself, foreign rule of limitation shall be good defence to a suit instituted in India provided the parties were also domiciled in the said foreign country during the period prescribed by the rule of

that country. The section is, in terms, applicable only to suits. The principle on which it is based is, however, of universal application and applies to all suits and proceedings.

PART III

Computation of Period of Limitation

12. Exclusion of time in legal proceedings.—(1) In computing the period of limitation of any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

Notes

Sections 12 to 18 of the Limitation Act deal with the computation of periods of limitation. In other words, he points out how the period or time shown in the II column of the Schedule is to be computed. In other words, what days or period have to be excluded from calculation of period of limitation is pointed out by the above sections. No prayer or application is needed on the part of a party for the exclusion of the temperative by the section itself and it is the duty of the court to exclude such time.

(1) In computing the period of limitation prescribed for any *suit*, the date shown in the III column of the Schedule as the day from which the period of limitation begins to run shall be excluded. Thus, if a pronote is executed on 5th June, 1945, the last day for filing the suit will be 5th June, 1948 and not 4th June, 1948, because the Ist day, *i. e.*, 5th June, 1945 will not be taken into account in computing the period of limitation which is three years in the case of a pronote.

(2) In computing the period of limitation prescribed for an *appeal*, the following periods shall be excluded :— (*a*) the day on which the period begins to run ; (*b*) the day on which the judgment was pronounced; (*c*) the time requisite for obtaining a copy of the decree, sentence or order ; (*d*) the time requisite for obtaining a copy of the judgment. The time spent in obtaining copies of judgment and decree must be excluded though such copies need not, according to the rules of the court, accompany the memorandum of appeal. (*Mukandi Ram* v. *Executive Engineer*, A. I. R. 1956 Pepsu 40).

It is only when an application is made for certified copies of the judgment and decree for the purpose of filing an appeal, the appellant is entitled to the time occupied by the office for preparing copies. When there is no application, the appellant cannot be entitled to more than 90 days for filing his appeal. (*State of Orissa* v. *Krishnaprasad*, 1973 Cuttack Law Times 1068).

The exclusion of time provided for in Sec. 12 is pernissible in computing the period of limitation for filing an appeal in the High Court under the Representation of the Peoples Act, 1951. (*Vidyacharan Shukla* v. *Khulchandra Baghol*, A. I. R. 1964 S. C. 1599).

(3) In computing the period of limitation prescribed for an *application for revision or for review*, the following periods shall be excluded :—(*a*) the day on which the time begins to run ; (*b*) the day on which the judgment was pronounced ; (*c*) the time requisite for obtaining a copy of the decree ; (*d*) the time requisite for obtaining a copy of the judgment.

(4) In computing the period of limitation prescribed for an *application for leave to appeal*, the following periods shall be excluded.—(*a*) the day on which the time begins to run ; (*b*) the day on which the judgment was pronounced: (*c*) the time requisite for obtaining a copy of the decree; (*d*) the time requisite for obtaining a copy of the judgment.

(5) In computing the period of limitation prescribed for an *application to set aside an award* the following periods shall be excluded:—(*a*) the day on which time begins to run; (*b*) the time requisite for obtaining a copy of the award.

(6) In computing the period of limitation prescribed for *any other application*, only the day on which the time begins to run shall be excluded.

Application for leave to appeal to the Supreme Court.—In computing the period of limitation for an application for leave to appeal to the Supreme Court the time requisite for obtaining a copy of the judgment appealed from must be excluded, I. L. R. 57 All. 455 and A. I. R. 1926 All. 268 overruled. *Baldev Pd.* v. *Dwarika*, 1957 A. L. J. 316 (F. B.). This has now been expressly provided in sub-Section (3) of Sec. 12. But it can no longer be said by any appellant that the time taken by him in obtaining a certified copy of a decree or order should be excluded in his favour even though he applied for a copy after expiry of the period of limitation. The object of sub-Sec. (2) of sec. 12

is to enable a party to exclude the time requisite for obtaining a copy of the order after the period of limitation has commenced. In computing or calculating the period of limitation from a particular point the Sub-section enables the exclusion of a time from that period caused by an event that intervened between the commencement and the termination of the said period. *N. D. Parthasarthy* v. *State of Andhra Pradesh*, A. I. R. 1966 S. C. 38. It has no concern with any events anterior to the commencement of the period of limitation or posterior to the said period.

'Time requisite for copy

What is deductible under Sec. 12 (2) is not the minimum time within which a copy of the order appealed against could have been obtained. It must be remembered that Sub-Sec. (2) of Sec. 12 enlarges the period of limitation prescibed under entry 157 of schedule I. That section permits the appellant to deduct from the time taken for filing the appeal, the time required for obtaining the copy of the order appealed from and not any lesser period which might have been occupied if the application for copy had been filed at some other date. That section lays no obligation on the appellant to be prompt in his application for a copy of the order. A plain reading of Sec. 12 (2) shows that in computing the period of limitation presented for an appeal, the day on which the judgment or order complained of was pronounced and the time taken by the court to make available the copy applied for, have to be excluded. There is no justification for restricting the scope of that provision.

If the appellate courts are required to find out in every appeal filed before them the minimum time required for obtaining a copy of the order appealed from, it would be unworkable. In that event every time an appeal is filed, the court not only will have to see whether the appeal is in time on the basis of the information available from the copy of the order filed along with the memorandum of appeal but it must go further and hold an enquiry whether any other copy had been made available to the appellant and if so, what was the time taken by the court to make available that copy. This would lead to a great deal of confusion and enquiries into

the alleged laches or dilatoriness in respect not of copies produced with the memorandum of appeal but about other copies which he might have got and used for other purposes with which the court has nothing to do. *State of U. P.* v. *Maharaja Naraini*, A. I. R. 1968 S. C. 960; A. I. R. 1935 Lah. 682 *overruled*.

Even where there are no rules requiring a copy of the order or judgment to be filed along with the appeal, still, a copy is required for the party to enable him to present the appeal, and take proper grounds. Consequently, period taken by the appellant to obtain copy of judgment and order, will be excluded from the period of limitation, even if there are no rules requiring such copies to be filed along with the appeal. *Municipal Board, Lucknow* v. *Bhagwandas*, A. I. R. 1959 All. 500.

Sec. 12. (2) does not make the exclusion of time required for obtaining a copy of the order sought to be revised dependent upon any requirement of such a copy being filed along with an application for revision, on the other hand it is absolute in its terms. *Punni* v. *State of U. P.*, A. I. R. 1971 Allahabad 387.

The word "requisite" is a strong word ; it may be regarded as meaning something more than the word 'required'. It means, properly required, and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the debt beyond the prescribed period is due to his default. But for that time which is taken up by his opponent in drawing up the decree or by the official of the court in preparing and issuing the two documents, he is not responsible. *Jijibhoy N. Surty* v. *T. S. Chettyar*, A. I. R. 1928 P. C 103.

When the court requires a party to do a particular act by a particular time the party will be within his right in doing it within the time and he cannot be penalised for what he has done, according to the directions of the court. Even if the party complies with the direction on the last day of the period granted by the court it makes no difference because the direction will be deemed to have been complied with on the first day. Therefore the time taken for filing of the copy stamps or payment of printing charges,

as per the directions of the court, cannot be counted against the party, but it must be deemed to be the part of the time requisite by the court to furnish certified copeis. *In re Javvaji Venkateshwarlu*, A. I. R. 1974 Andhra Pradesh 319.

The words "the time requisite for obtaining a copy" are not inapplicable in those cases where the appellant is not required to obtain a copy at his own expense by applying for it but is entitled by statute to get a copy from the authority or authorities concerned within a certain time. In a case of that type also the time, taken by the authorities concerned to supply the copy, would legitimately be "time required for obtaining the copy," so far as the appellant is concerned, and he will be entitled to its exclusion under S. 12 (2) in the matter of computation of the period of limitation. *G. E. C. India Ltd.* v. *Corporation of Cal.*, A. I. R. 1956 Cal. 413.

Where copies of the judgment or decree are obtained, but are not available for being filed owing to their loss or other cause and subsequently another application for copies is made and an appeal is filed with these copies, the time requisite for obtaining the copies which accompany the memorandum of appeal should be excluded and not the time spent in obtaining the copies in the first instance. *Kanchedilal* v. *Ranjeet Kachhi*, A. I. R. 1960 Madhya Pradesh 140.

"Time requisite for obtaining a copy" means the time beyond the appellant's control occupied by the copying department after an application for copy has been duly made and not an ideally shorter period within which it could be shown that the copying department could prepare a copy. The court is not concerned with the ideally minimum time within which the copying department could most expeditiously produce a copy. The court is concerned with the time actually occupied by the copying department.

Time requisite for obtaining copy of judgment or decree starts from date of application. Where the original application filed for copies of the judgment and decree was struck off by the trial Court but it was restored by a subsequent application, the date for computing the period of limitation

is not the date on which the second application is filed, but the date when the original application was filed. In other words where dismissal of an application for copy of judgment and decree is cured by its restoration, the starting of "exclusion period" also is therely restored. *Iqbal Singh* v. *A. V. Subbarao*, A. I. R. 1973 A. P. 193.

Section 12 (2) of the Act applies to appeals, applications for leave to appeal and applications for a review of a judgment. An application under Sec. 28, Goa, Daman and Diu Sales Tax Act praying for a reference of points of law for the adjudication of the High Court does not come under any of the categories mentioned in Sec. 12 (2). Therefore the application is not entitled to exclude the time requisite for obtaining a copy of the order against which the application for reference is made. *Sociedade de Fomento Industrial Pvt. Ltd.* v. *The Government of Goa, Daman and Diu*, A. I. R. 1974 Goa, Daman, Diu 42. *Gopaldas Sarvadayal* v. *Commissioner of Sales Tax*, U. P. A. I. R. 1956 All. 305 was followed in this case.

According to the decisions given by the Rangoon, Lahore and Patna High Courts in *Ramanatha Reddiar* v. *Commissioner of Income-tax*, A. I. R. 1928 Rangoon 152; *Muhammad Hayat Haji Muhammad* v. *Commissioner of Income-tax, Punjab* and N. W. F. P. A. I. R. 1929 Lahore 170 and *Mohan Lal Hardeo Das* v. *Commissioner of Income-tax, Bihar and Orissa*, A. I R. 1930 Pat. 14 respectively, the provisions of Sec. 12 (2), Limitation Act apply to applications for reference under Sales Tax Act.

In a Letters Patent Appeal the time requisite for obtaining copies of the judgment and decree should be excluded in computing the period of limitation fixed by the Rules of the High Court for preferring a Letters Patent Appeal. *Sahat Ali Khan* v. *Abdul Cahi Khan*, 1956 A. L. J. 283 (F. B.) (Per majority of Full Bench, R. Dayal and Agrawala, JJ. *Contra*), A. I. R. 1947 Pat. 329 and A. I. R. 1953 Bom. 35 (*dissented from* and 2 All. 192 (F. B.) *overruled*).

Section 12 of the Limitation Act does not apply to an application for making reference under Section 18 of the

Land Acquisition Act. Time taken for obtaining a copy of the award cannot therefore be excluded in reckoning limitation for an application under section 18 of the Land Acquisition Act. *Nafis-ud-din* v. *Secretary of State*, A. I. R. 1927 Lahore 852; *Kunbibi* v. *Land Acquisition Officer* A. I. R. 1960 Kerala 80; *Hasan Mulla* v. *Tasiruddin*, I. L. R. (1912) 39 Cal 393; *Collector of Akola* v. *Anand Rao* (1911) 11 Indian Cases 690 ; *Kashi Prasad* v. *Notified Area, Mahoba*, A. I. R. 1932 All. 598 ; *Jankibai* v. *Nagpur Improvement Trust* A. I. R. 1960 Bomb. 499 ; *Lakshmi Narayan* v. *State of Rajasthan*, A. I. R. 1966 Raj. 118.

An application under Section 18 of the Land Acquisition Act, 1894 for reference by the Collector for determination of the compensation amount can neither be treated as an appeal nor as an application for review within Section 12 (2) of the Limitation Act. Therefore time taken for obtaining a copy of the award cannot be excluded.

Section 12 (4) of the Limitation Act makes provision for an application to set aside an award. This shows that the legislation had no intention to make provision for exclusion of the time requisite for obtaining copy of the award for making an application for reference under Sec. 18 of the Land Acquisition Act else it would have made an express provision for it. *M/S Capstan Motor (India) Ltd.* v. *The State of Rajasthan*, A. I. R. 1974 Raj. 63.

Time requisite for obtaining a copy can be excluded in computing limitation prescribed by Section 116-A, Representation of the People Act, 1951. *D. P. Mishra* v. *Kamal Narayan*, A. I. R. 1970 S. C. 1477.

Section 12 (2) applies to an application for special leave made under Section 417 (3), Criminal Procedure Code. *Lala Ram Harl Ram*, A. I. R. 1970 S. C. 1093.

For mal order

Section 12 (2) applies to a formal order. Therefore time taken in obtaining copy of a formal order is liable to be taken into consideration. *Mst. Shahjahan Begam* v. *Zahirul Hasan*, A. I. R. 1972 All. 511.

Court closing after delivery of judgment.—Where the judgment was delivered on the last day before the close of the Court for Christmas vacation and the application for copy of the judgment was made on the next reopening day, *held* that it being impossible for the appellant to make an application earlier, he was entitled to exclude under Sec. 12, not only the time actually taken in obtaining the copies, but also the whole of the time during which the court was closed when he could not have possibly applied for copies. I. L. R. 27 Mad. 21. There is a difference of opinion as to whether the appellant is entitled to deduct the period of vacation if the application for copy is made not on the reopening day but a few days later. According to Allahabad High Court the period of limitation cannot be extended if the application is not filed on the reopening day. *Puttu Lal* v. *Bhagwan Das*, 1937 A. L. J. 1279. The Patna High Court has, however, taken another view in *Debi charan. Lal* v. *Mehdi Husain*, 35 I. C. 888. This view has been followed by the Madhya Pradesh High Court also in *Lalta Pd.* v. *Shyammohan*, A. I. R. 1961 Madhya Pr. 244. It has been held in this case that if a judgment is pronounced on such a date that the day or days following it are holidays, during which the appellant cannot apply for a copy, then in computing the period of limitation prescribed for appeal such holidays should be excluded.

Explanation

Before the Indian Limitation Act, 1963 was enacted there was sharp difference of opinion amongst the different High Courts in regard to cases where an application for a certified copy of the decree is made after the said decree is drawn up. In dealing with such cases, the Bombay, Calcutta and Patna High Courts, held that the period taken in drawing up of the decree would be part of the period requisite for obtaining the copy, while other High Courts took a contrary view. The explanation given in Section 12 of the present Limitation Act of 1963, appears to have settled the difference amongst the High Courts about the inclusion or otherwise of the period of time taken by the court to prepare the decree before an application for a copy thereof is made when such an application is filed after

the preparation of the decree. At present, as required under the Explanation, the said period shall not be excluded, that means, shall be included as time requisite for obtaining the copy.

What the Explanation requires is that for the purpose of computing the time requisite for obtaining a copy of a decree any time taken by the Court to prepare the decree before an application for copy thereof is made shall not be excluded, that is, shall be included. It is not that such time shall not be excluded for the purpose of computing the period of limitation. Sub-section (1) to (4) of section 12 speak about the exclusion of time for the purpose of computing the period of limitation and the Explanation speaks about the exclusion or non-exclusion of time for the purpose of computing the time requisite for obtaining the copy. *Smila Konglui Tangkhul* v. *Wangmazum Tangkhul*, A. I. R. 1973 Gauhati 60.

The phrase "before an application for a copy thereof is made" has been mentioned in the Explanation to emphasize and clarify the pre-existing difference of opinion between the various High Courts which was precisely on the point as to whether the time taken in drawing up the decree prior to the making of an application was or was not to be included in computing the period of time requisite for obtaining a copy. The Legislature has now said that this is part of the time requisite for obtaining copy. This is the significance of the phrase "before an application for copy thereof is made". *Mst. Shahjahan Begum* v. *Zahirul Hasan*, A.I.R. 1972 Allah. 511. See also *State of Bihar* v. *Mohd. Ismail*, A. I. R. 1966 Pat. (F.B.); *Dungar Mal* v. *Rukma Kumar* A I R. 1970 Cal. 443 *Har Bux Singh* v. *Gram Sabha*, 1970 A. L. J. 720; *Kautuki* v. *Raghu Sethi*, A I.R. 1970 Orissa 116.

The Explanation expressly provides for the manner of computation of the time requisite for obtaining a copy and it says that any time taken by the Court in preparing the decree or order before the application for copy is made shall not be excluded. The phrase "shall not be excluded"

in the context of the Explanation can only mean that it shall not be excluded in computing the time requisite for obtaining the copy. In other words, whatever time is taken by the Court in drawing up the decree prior to the making of an application will be deemed included in the time requisite for obtaining a copy. The time requisite for obtaining a copy will be time taken by the court in preparing the decree or order before the application for copy is made as also the time taken in preparing the copy after the application therefore has been made.

A delay of the office in drafting a decree or an order before an application for a copy is made cannot be excluded as time requisite for obtaining a copy of the decree or the order.

Where Court by omitting to give appropriate direction in the judgment leaves the judgment in the state of an incomplete and tentative judgment and difficul ty created thereby is overcome only when one of the parties furnish the entire stamp duty, the time that elapsed for that reason is the time taken by the court to prepare the decree and therefore would come within the Explanation under Sec. 12, *Nirshingha Murari Datta* v. *Ajit Kumar Dutta*, A. I. R. 1971 Cal. 213 (D. B.).

13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for.— In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court fees prescribed for such suit on appeal, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.

Notes

Section 13 is a new section and it did not find place In the old Limitation Act of 1908. In introducing ths section the joint committee observed, "The committee feel that in a case where an application for leave to sue or appeal as a pauper has been made and rejected, the time taken in prosecuting in good faith such application should be excluded in computing the period of limitation prescribed."

According to section 3 a suit is instituted in the case of a pauper, when his application for leave to sue as a pauper is made. If the application for leave to appeal as a pauper is rejected and the applicant afterwards files an appeal in the regular way, at a time when the period of limitation for filing the appeal has expired, the position under the old Act of 1908 was that the appeal wes treated as time-barred because the date of the appeal was the date of filing the regularly stamped memorandum of appeal and could not relate back to the date of filing the application for leave to appeal. But the court could grant time in exercise of its discretion under Section 5 and the appeal filed within the time granted could not be treated as barred by limitation. Now section 13 of the new Act expressly provides that where leave to sue or appeal as a pauper is applied for but is not granted, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded in computing the period of limitation prescribed for such suit or appeal and the court may, on payment of the court fee, treat the suit or appeal as having the same force and effect as if, the court fees had been paid in the first instance.

14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against

the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithsanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(*a*) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted ;

(*b*) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding ;

(*c*) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

Notes

The principle of section 14 is the protection against the bar of limitation of a person honestly doing his best to get his case tried on the merits, but failing through the court being unable to give him such a trial. *Mathura Singh* v. *Bhawani Singh*, 22 All. 248 (F. B.).

In computing the period of limitation prescribed for any *suit*, the time during which the very plaintiff has been prosecuting with due diligence another proceeding, whether in a court of first instance or in a court of appeal or revision, against the very defendant, shall be excluded, where that another proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

The section does not prescribe any period of limitation but provides only a method of calculation of that period when a suit has been instituted *bona fide* in a court without jurisdiction. The effect of this section is not to render the suit after refiling in the proper court a continuation of the original suit, and consequently the period of limitation has to be determined as if it was a new suit, and the period will be that which was prescribed for the original suit, but excluding the period during which the suit was being prosecuted *bona fide* in a wrong court.

A person who claims exclusion of time under this section must prove the following :—

(*a*) That he had prosecuted the former proceeding in good faith and with due diligence ;

(*b*) That the former proceeding was between the same parties ;

(*c*) That the matter in issue was the same :

(*d*) That the former court had been unable to entertain it from defect of jurisdiction or other cause of a like nature.

Where a suit is dismissed not because the court had no jurisdiction to entertain it, or for any other cause of a like nature, but because it was misconceived or because the proceeding or the suit was not one recognised by law as legal in its initiation, then clearly section 14 is not attracted to such a suit. *Kashi Ram* v. *Santokhbai*, 1957 M. P. C. 550.

The burden of proving all the above conditions is on the plaintiff. *Lal Chand* v. *Balaram*, 1957 M. P. C. 260.

The same considerations apply to an *application* which has to be filed within a certain time.

Applicability to Appeals

Though Section 14 in terms applies to *suits* and *applications* only and not to appeals, the circumstances contemplated in the Section can justifiably be taken to constitute a "sufficient cause" within the meaning assigned to that phrase in Section 5 of the Limitation Act for purposes of appeals also. A contrary view taken by some High Courts in the earlier days is against the concensus of legal authority on this subject. The only distinction between the applicability of Section 14 in terms in the case of a suit or an application on the one hand, and the invocation of the principles of Section 14 in the case of an appeal on the other, is that whereas Section 14 confers a right on a plaintiff or an applicant to get the period during which the suit or application was pending and prosecuted *bona fide* in the wrong Court excluded as a matter of right, the remedy based on the principles of that provision under Section 5 of the Act in the case of an appeal is discretionary, and the Court may condone the delay in filing an appeal in the correct Court if the requirements of Section 14 appear to have been satisfied and on the facts and in the circumstances of the given case they are held to constitute a suffi-

cient cause in the sense in which that expression is used in Sec. 5 of the Act. Even if the considerations of good faith and due diligence which are necessary ingredients of section 14 may not be applicable in their rigidity to proceedings under section 5 of the Act, lack or want of *bona fides* can never justify the raising of an inference of sufficient cause in any circumstances. *Munshi* v. *Punna Ram*, A. I. R. 1974 Punjab & Haryana 229 (D. B.). In this case the judgment-debtor deliberately attempted to keep the appeal pending before the District Judge despite notice of defect of jurisdiction. *Held* that it could not be said that the mistake of preferring an appeal to the wrong Court was a *bona fide* mistake The applicant was held not entitled for condonation of delay or extension of time for filing appeal.

Applicablity to proceedings under U. P. Sales Tax Act.— The time spent in prosecuting the application for setting aside the order of dismissal in default of appeal filed under Section 9 of the U. P. Sales Tax Act can be excluded in computing the period of limitation for filing the revision under Section 10 of the U. P. Sales Tax Act by the application of the principle underlying Section 14 (2). *Commissioner of Sales Tax, U. P.* v. *Parson Tools & Plants, Kanpur*, A. I. R. 1970 Allah. 428 (F. B.).

Ignorance of law

Ignorance of law by the plaintiff, which led to his filing the previous suit in a wrong court is no excuse and would disentitle the plaintiff to the protection under S. 14.

But where there were conflicting decisions on the question of the jurisdiction of the court to try the suit of the nature of the plaintiff's suit and the plaintiff had filed his suit in the particular court relying on an old decision of the High Court, the latest decision holding the contrary view (in which the old decision was neither expressly overruled nor dissented from) having been reported after he had filed his suit :

Held, that though the plaintiff and his solicitor should have noticed the latest restatement of law and should not have continued the suit in the Court in which it was wrongly

instituted relying on the old decision, his failure to do so could not be characterised to be bad as to disentitle the plaintiff to the protection of S.14. *Union of India* v. *Maliram*, 64 Cal. Weekly Notes 371.

The appeal should have been filed in the High Court but on the advice of the Government Pleader the same was filed in the Subordinate Judge's Court. The mistake was committed on the advice of the Government Pleader and moreover there was ambiguity in regard to the appellate forum. In such circumstances it must be concluded that the mistake of filing the appeal in the wrong court was *bona fide*. *State* v. *Krishna Kurup*, A. I. R. 1971 Kerala 211.

Where the petitioner filed a petition for leave to appeal to the Supreme Court but the same was refused and on the very next day they filed an application for review in the High Court the time spent in the proceedings for leave to appeal can be excluded under Section 14 (2). *Malik Dar* v. *Janti*, A. I. R. 1971 Jammu & Kashmir 119.

Defect of Jurisdiction

Defect of jurisdiction in Sec. 14 means a defect in the particular court where the former proceedings were instituted and not inability shared by that court in common with all other courts to entertain the proceedings.

Defect of jurisdiction does not cover such mistake as the prosecution of an appeal which does not lie at all in any court. Proceedings to fall under Sec. 14 must be such as one recognised by law as legal in their initiation though the party carried the proceeding to a wrong court. *Govind Menon* v. *K. Pillai*, A. I. R. 1955 Trav. Coch. 51 (F. B.).

When a court holds that it has no jurisdiction to try the suit, Order 7, Rule 10, C. P C. enjoins on the Court to make certain endorsements before the plaint is returned to the plaintiff. The proceedings before that court do not end on the date on which an order for return of the plaint is passed but continue till the endorsement required under Order 7, Rule 10 has been made by the court, and if for any reason,

the court delays the making of the endorsement the plaintiff is not to blame for it and he is entitled to exclude the time so taken by the court. But if the plaint is ready for return after the necessary endorsement has been made and the plaintiff does not take it back, he cannot be considered to have prosecuted the proceedings with due diligence and would not be entitled to any exclusion of time after plaint was ready for return. *Brij Mohandass Gokulchand* v. *Narsinghdas Manoharlal*, A. I. R. 1971 M. P. 243.

Execution application

Section 14 (2) applies to execution application as well. Therefore if a decree holder has been *bona fide* prosecuting his execution application in a court having no jurisdiction he is entitled under section 14 (2) to deduction of time spent by him in that court. *Syed Taimul Ali* v. *Har Deo Prasad*, 1959 A. L J. 718 : A. I. R. 1960 All. 375.

Civil Proceeding.—This section is in terms restricted to civil proceedings which term has been used in this section as opposed to criminal proceedings. In other words provisions of Sec. 14 are applicable only to civil proceedings and are not applicable to criminal proceedings. *Eliojar Bagh v. Duzanidhi Gauda*, A. I. R. 1971 Orissa 133. The section requires that the proceedings must be "Civil Proceedings", and also that they are the proceedings of "Court". Thus the period spent in purely administrative proceedings before the Collector (when not acting as a "Court"), cannot be excluded under this section. The expression 'Court' refers to judicial courts and not domestic forums or tribunals. *P. Hassaram* v. *Impex (India) Ltd.*, A. I. R. 1954 Bom. 309. The words 'court of appeal' are wide enough to include a court of revision. *Syed Ahmad* v. *Qadir Unnissa Begum*, A. I. R. 1954 Hyd. 225.

The word "Court" signifies a court in the strict sense and does not include an authority who acts as a tribunal or a quasi-judicial tribunal and may be regarded as a court in the wider sense of the term. The appellate authority under section 9 and the revising authority under section 10 of the U. P, Sales Tax Act are not a court within the mean-

ing of that term in section 14 (2), Limitation Act. *Commissioner of Sales Tax U.P.* v. *Parson Tools and Plants, Kanpur*, A. I. R. 1970 Allah. 428 (F. B.).

Clause (*a*) of the Explanation to the section says that in excluding time under this section, the day on which the former suit or application was instituted or made and the day on which the proceedings therein ended shall both be excluded. The period that can be deducted under this section is only the period from the date of the filing of the plaint to the date on which it was finally returned by the court for representation. Thus, where *A* presented a plaint in court and the same was ordered to be returned on the 25th March for presentation to the proper court but the office returned it only on the 10th April, it was held that *A* was entitled to count in his favour the days upto the 10th April when the plaint was finally returned.

Clause (*b*) of the Explanation says that the plaintiff or the applicant who, after having won the case in the court of first instance strove as respondent to maintain the decree of the Court of first instance and ultimately lost the appeal by the appeal having been allowed against him, is entitled to have the period during which he has been fighting the appeal as respondent to be excluded from limitation should it become necessary to file a suit.

Cause of a like nature

Misjoinder of parties or causes of action is deemed to be a cause of a like nature with defect of jurisdiction. A suggestion was made to the Law Commission that a further explanation to section 14 should be added extending the scope of the expression "other cause of a like nature" so as to bring within its ambit cases where the High Court exercising its jurisdiction under Article 226 of the Constitution rejects a petition in the exercise of its discretion on the ground that the applicant has an alternative remedy by way of suit. This suggestion was rejected and the ground suggested cannot be regarded as a "cause of a like nature."

The expression "other cause of the like nature" of howsoever wide amplitude, has to be read *ejusdem generis* to along with the earlier part of the same provision which relates to defect of jurisdiction of the court. It is not possible to lay down an exhaustive list of all causes showing defect of jurisdiction and each case will depend on its own facts and circumstances. The Legislature in clause (c) of the Explanation to section 14 has provided that misjoinder of parties or of causes of action shall be deemed to be a cause of the like nature with defect of jurisdiction. But the plea of *bar of res judicata* is not such a question which can be said to relate to the jurisdiction of the court or other cause of like nature within the meaning of section 14. *Johari Mal* v. *Surjan Singh* (1970) 72 Punjab Law Reports 385.

15. Exclusion of time in certain other cases.—(1) In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction

and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or *interim* receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded.

Notes

Where the institution of a suit or the execution of a decree has been stayed by an injunction or order, the period during which such injunction or order is in force can be excluded in computing the period of limitation for such suit or application. For excluding the time under section 15, it must be shown that the institution of the suit in question had been stayed by an injunction or order. Even assuming that section 15 would apply even to cases where the institution of the suit is stayed by necessary implication of the order passed or injunction issued in the previous litigation, there

would be no justification for extending the application of section 15 on the ground that the injunction of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship ; but there can be no doubt that, in construing provisions of limitation equitable considerations are immaterial and irrelevant and in applying them effect must be given to the strict grammatical meaning of the words used by them. [*Siraj-ul-haq* v. *Sunni Central Board of Waqf*, 1959 S. C. J. 367].

Applicability

The section applies only to *suits and applications for execution of a decree.* An application for delivery of possession by the auction-purchaser under Order 21, rule 97 of the Civil Procedure Code is not an "application for execution," and hence this section would not apply.

This Division Bench decision of the Calcutta High Court observed that the "application for delivery of possession by the auction purchasers may be treated as an application in execution proceeding, but it cannot be treated as an application for execution". This was dissented to in A. I. R. 1972 All, 144 in which it was observed:—

"Certainly it is an application made in an execution proceeding, and there is no dispute that this cannot be treated as an application for execution. A perusal of schedule I of the Limitation Act makes it abundantly clear that Arts. 118 to 135 of the Limitation Act relate to the limitation prescribed for making application in specific cases. In this very category Art. 134 of the Limitation Act also comes. Therefore, an auction purchaser has to make an application for delivery of possession within one year and this application has to be made in the execution proceedings itself. A harmonious interpretation has to be given to the sections and articles of the Limitation Act, and, therefore, the words "application for execution" used in section 15 cannot be narrowly interpreted so as to include only a decree-holder and his assignee, otherwise an auction purchaser, for whom limitation for making an application for delivery of pos-

session is prescribed as one year, would not be entitled to the benefit of section 15. This could never have been the intention of the legislature to put such a narrow interpretation to section 15". After making these observation Mr. Justice K. N. Srivastava in the case of *Sahu Deoki Nandan* v. *Narendra Kumar*, A. I. R. 1974 Allah. 144 *held* that where an auction-purchaser had been restrained by an order of temporary injunction from taking delivery of possession of the property purchased, the period during which he was so restrained must be excluded while computing the period under Art. 134.

Section 15 of the Limitation Act is attracted even so far as the period of 12 years prescribed under section 48, C. P. C., is concerned. *Simaru* v. *Nachiappa*, (1955) 1 M. L. J. 51. In other words, if the execution of the decree has been stayed for a particular period, then that period is to be excluded in determining whether or not an application is barred under section 48, C. P. C. *A. L. Khan v. Manindra Nath Roy*, A. I. R. 1955 Cal. 269 ; A. I. R. 1939 Allahabad, 403 (F. B.) ; (1951) 2 M. L. J. 668 (F. B.).

"Execution"

"Execution" in Section 15 embraces all the appropriate means by which a decree is enforced. It includes all processes and proceedings in aid of or supplemental to execution. Stay of any process of execution is stay of execution within the meaning of the section. Where any injunction or order has prevented the decree-holder from executing the decree, their irrespective of the particular stage of execution, or the particular property against which, or the particular judgment-debtor against whom, execution was stayed, the effect of such injunction or order is to prolong the life of the decree itself by the same period during which the injunction or order remained in force. In other words, the period of stay shall be excluded from computation of the period of limitation for further execution without creating any restriction on the rights of the decree-holder to execute the decree as he chooses. *Ram Narayan* v. *Anandilal*, A. I. R. 1970 Madhya Pradesh 110 (F. B.).

"Stayed by injunction or order"

The words "stayed by injunction or order" have reference to orders of courts and not to a disability to sue or to apply arising from other circumstances such as the declaration of war. Where there is no such order as to prevent the party from instituting the suit or from applying for execution, no exclusion of time can be claimed under this section.

Orders by the Executive Government purporting to stay the execution of the decrees in certain area in which the judgment-debtors lived do not amount to an injunction or order under section 15 and the decree-holders are not entitled to the exclusion of time under section 15 for which the execution was barred. *Bishambhar Dayal* v. *Gopal*, A. I. R. 1959 Raj. 256.

Problem.—A obtained a decree for possession against B on 1st October, 1931. He finally applied for execution on 26th September, 1945. For two years the execution of the decree had been stayed by an order of injunction. Was the application for execution within time or not ? Give reasons.

A. Yes, the application was within time. Section 15 provides *inter alia* that in computing the period of limitation prescribed for an application for execution of a decree the execution of which has been stayed by injunction, the time of the continuance of the injunction will be excluded. In the case under discussion, if the period of two years during which the injunction continued be excluded, the application will be within time, *i.e.*, within 12 years which is the period of limitation prescribed for filing an application for execution of a decree.

Deduction of time

A final decree for sale was passed in a mortgage suit, on 29th August, 1913, and an application for execution of the decree was made on 18th April, 1914. While this application was pending, a suit was instituted for a declaration that a decree had been obtained by fraud, and on 9th December, 1914, an injunction was obtained in that suit restraining the decree-holder from executing the decree. On 26th April, 1915,

that suit was dismissed and the bar of injunction came to an end. An appeal was filed and it was dismissed on 19th April, 1917. Thereafter, the decree-holder applied for execution on 11th June, 1918. *Held* that the application was barred, because limitation ran from the time when the injunction came to an end by the order of the first court on 26th April, 1915, and not from the 19th of April, 1917 and it was necessary for the decree-holder to come into court within three years of the date of removal of the bar of injunction. *Balwant Singh* v. *Budh Singh*, 1920 A. L. J. 642.

Sub-section (2).—If law requires that a notice should be given or consent or sanction of the Government or any other authority should be obtained before a suit is instituted, then the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded in computing the period of limitation for such suit.

Therefore where a plaintiff, in a suit against the Government, is required to give notice to the Government under Section 80, Civil Procedure Code, he is entitled under Sub-Section (2) to exclude the period of notice in computing the period of limitation for the suit. *I. S. P. Trading Co.* v. *Union of India*, A. I. R. 1973 Cal. 74. See also *Shri Bhagwan* v. *Secretary of State* A. I. R. 1939 Allahabad 277 and *Laxmi Chand* v. *Dominion of India*, A. I. R. 1955 Nagpur 265. But if there was no cause of action against the Union of India, but still a notice under Section 80 was given, the period of notice given to the Government cannot be excluded in computing the period of limitation for the suit. *L. I. C.* v. *Mohan Singh*, 1973 J: L. J. 308 (D.B.).

Example.—Section 80, Civil Procedure Code requires a notice to be given before the institution of suit. In such a case, the period of notice shall be excluded. Similarly, sections 86 and 87 of the Civil Proedure Code require that in respect of suits against foreign rulers, ambassadors and envoys, the consent of the Central Government should be obtained before filing the suit. In such cases, the time taken for obtaining such consent shall be excluded.

Explanation to sub-section (2) lays down that in excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Gevernment or other authority shall both be counted.

Problem.—On 13-4-55 there accrued to a plaintiff a cause of action against a State Railway, the period of limitation prescribed for the enforcement of such claim being 3 years. The plaintiff, however, after serving a two months' notice as required by S. 80, C. P. C. filed a suit on 30-5-58. Is the suit barred by limitation ?

A. No. The suit is not barred by limitation. According to S. 15 (2) in computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded. Therefore in the problem under consideration the period of two months' notice should be excluded. After excluding the notice period the suit is within the prescribed period of two years.

Sub-section (3).—It is common knowledge that by the time a receiver or liquidator is appointed in insolvency or liquidation proceedings and the receiver or liquidator after getting information about the assets and liabilities of the estate settles down to the task of realising the assets of the estate, claims in favour of such estate or company get barred to the detriment of the persons entitled to the benefit of the assets. To avoid this hardship it has been provided in sub-section (3) that in respect of suits on behalf of an insolvent or a company in liquidation, the period between the date of the filing of the petition for adjudication or winding up and the appointment of the receiver or interim receiver or liquidator provisional liquidator and a period of three months thereafter (to enable the liquidator or the receiver to acquaint himself with the affairs of the estate) shall be excluded in computing the period of limitation for suits by or on behalf of an insolvent's estate or the company.

Sub-section (4).—This sub-section corresponds to Sec. 16 of the old Act of 1908 and provides that when a sale of property in execution of a decree takes place, there are several ways as pointed out in Order 21, Rules 89, 90 and 91, Civil

Procedure Code, in which such a sale may be attempted to be set aside. Section 15 (4) enacts that if a purchaser at a sale in execution has to file a suit to recover possession of the property purchased by him, the time during which the application to set aside the sale was being fought out will be excluded from computation.

"Proceeding."—The word "proceeding" in this sub-section appears to include both a *suit* as well as an *application*. The intention of the legislature is to allow exclusion of time during which the validity of the sale is in controversy, whether the sale is impeached by a *suit* or by an *application* to set aside the sale.

Example

Where the judgment-debtor filed an application to set aside the sale and, on the application being dismissed, filed a suit to set aside the decree and the sale, and the suit was finally dismissed by the Privy Council, the entire time taken in respect of such proceedings, *i. e.*, the period during which the legality of the sale was in question was excluded under this section in a suit for possession by the auction purchaser. (*Promotha Nath Roy* v. *Kishore Lal*, A. I. R. 1917 Cal. 802. See also A. I. R. 1957 Nag. 24).

Sub-section (5).—This sub-section reproduces section 13 of the old Act of 1908. It is based on the English Law according to which, if the defendant is beyond seas at the time of the right of action accruing to the plaintiff, the time or times appointed by the statute do not begin to run until the defendant returns from beyond the seas. Sub-section (5) merely enables the plaintiff to wait if he is so inclined till the defendant comes back to India. The Limitation Act nowhere says that no suit may be filed when the defendant is outside India. A. I. R. 1961 Mad. 199.

Sub-section (5) lays down that if a *defendant* has gone out of India, *i. e.*, has gone to some foreign country, the time during which he remains outside will be excluded from computation. The sub-section applies only to defendants, and in favour of the plaintiffs so as to prevent limitation from running against the latter, and only in respect of the institu-

tion of suit ; it is not applicable in favour of a defendant who has been absent from India and wants to set aside proceeding in execution taken against him in his absence. The sub-section has reference only to the absence of the *defendant* from India and from the territories outside India under the administration of the Central Government, and not to that of the *plaintiff*. The sub-section applies to *suits* only and not to appeals or applications. Absence of respondent does not, therefore, entitle an *appellant* to the benefit of the section.

When it has to be ascertained whether a suit is in time or not, the interval between the date when the cause of action arose and the date when the suit was instituted should be first computed. From that interval the time during which the defendant has been absent from India should be subtracted by virtue of sub-section (5). If the resultant period does not exceed the time specified in Column 3 of the Schedule to the Act, the suit would be in time. A. I. R. 1961 Mad. 199. Sub-section (5) is in no way affected or qualified by section 9. Its obvious scope and intention is to save the creditors subsequently suing their debtors the period during which such debtors have been absent from India. I. L. R. 4 All. 530.

Suit in India on cause of action arising outside.— Sub-section (5) which corresponds to section 13 of the old Act of 1908 would apply to cases where the suit is instituted in India even though the cause of action might have arisen outside India, *i.e.*, also for suits based on a cause of action which arose out of India. *M. Mudaliar* v. *A. Pillai* (1954) 2 M. L. J. 731 (F. B.).

Absence from India

The words "absent from India" do not necessarily imply that the defendant was present in India at the time the cause of action accrued or the period of limitation commenced to run. The sub-section will apply equally to causes where the defendant was absent altogether from India at the time of the accrual of the cause of action, as to cases where he leaves India after the period of limitation commenced to run. [*Atul Kristo Bose* v. *Lyon & Co.*, (1887) 14 Cal. 457]. If the defendant actually returns to India, the plaintiff's ignorance

of the fact of such return does not prevent the operation of limitation.

Section 15 (5), Limitation Act contemplates the case of a defendant who has been absent from India. That section presupposes that the defendant was at one time present in India and later he has been absent from India. A person who was never in India cannot be considered as having been absent from India. Factually a company cannot either be present in India or absent from India. But it may have a domicile or residence in India.

Section 15 (5) can be viewed in one of the two ways, *i. e.*, that that provision does not apply to incorporated companies at all or alternatively that the incorporated companies must be held to reside in places where they carry on their activities and thus being present in all those places.

The plaintiff company filed a suit on 15.11.65 for recovery of a sum of money from the defendant company on account of the tax liability of the latter discharged by the plaintiff before 15.11.62. The defendant, a foreign company had invested large sums of money in the plaintiff company and its Board of Directors used to meet in India now and then. The defendant company was attending the general meetings of the shareholders of the plaintiff company through its representatives.

Held that in the circumstances the defendant company must be held to be residing in India and was not absent from India within the meaning of Section 15 (5). Consequently Sec. 15 (5) had no application to save the suit from the bar of limitation and the suit brought by the plaintiff company was barred by limitation of three years under Art. 23 of the Limitation Act. *Turner Morrison & Co. Ltd.* v. *Hungerford Investment Trust Ltd.*, A. I. R. 1972 S. C. 1311.

Examples

1. A suit on the basis of a promissory note payable on demand dated Ist January, 1944, was filed on the Ist January, 1958. The defendant was in Afghanistan from the beginning of

1945 to the end of 1948. (The ordinary period of limitation for such a suit is three years from the date of the promissory note). Discuss if the suit is in time.

Under Sec. 15 (5) in computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India and from the territories beyond India under the administration of the Central Government shall be excluded. In the case under discussion the defendant remained absent from India from 1945 to 1948 and therefore this period (1945-1948) should be excluded in computing the period of limitation of three years prescribed for a suit on the basis of a promissory note. After excluding this period, the suit is filed within three years and therefore it is within time.

2. A lent some money to B, a resident of Allahabad, on 5th January, 1940 on the foot of a promissory note. B went to Korea on Ist January, 1942 and returned to India on Ist May, 1946. What would be the last day of limitation for filing a suit against B for the recovery of this debt? B took another loan from A on the foot of another promissory note on 15th May, 1946. After that, B went away to Bangalore and returned to Allahabad on first February, 1950. What would be the last day of limitation for filing a suit for recovering the loan taken by B in 1946? Give reasons.

The period of limitation prescribed for a loan on the basis of a promissory note is 3 years from the date the loan was advanced. The period from 1st January, 1942 to 30th April, 1946 during which *B* remained in Korea, *i. e.*, outside the territory of India, shall be excluded in view of sec. 15 (5). On excluding this period, the last day of limitation will be 5th May, 1947.

As for the loan taken on 15th May, 1946 the last day of limitation will be 15th May, 1949 *i. e.*, 3 years after the date of loan. The time upto 1-2-1950 spent in Bangalore will not be excluded as Bangalore is in India and sec. 15 (5) speaks of exclusion of time of defendant's absence from India and certain other territories, and not from the city or province where the loan was taken.

Absence of some of several defendants from India.

A institutes a suit against *B*, *C* & *D*. *D* was absent from India for a certain period after the cause of action arose in favour of *A*. In computing the period of limitation for the suit, can the period of *D*'s absence be excluded under this section—

1. as against the defendant *D*,
2. as against all the defendants ?

The answer to the question would seem to depend upon the nature of the liability of *B*, *C* and *D*. If their liability is *several* or *joint and several* one, the period of *D*'s absence can be excluded only as against *D* and not against *B* and *C* also. If without excluding period of *D*'s absence it appears that the suit is barred against *B* and *C*, it must be dismissed as against them, but can proceed against *D*.

Suppose the liability of *B*, *C* and *D* is a *joint* one. The period of *D*'s absence must be excluded not only against *D* but against *all*. The reason is that their liability being assumed to be *joint*, the cause of action against them is single and indivisible and some of them alone cannot be sued in the absence of the others.

16. Effect of death on or before the accrual of the right to sue.—(1) Where a person who would, if he were living, have a right to institute a suit or make an application dies before the right accrues, or where a right to institute a suit or make an application accrues only on the death of a person, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, or where a right to institute a suit or make an application against any person accrues on the death

of such person, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute such suit or make such application.

(3) Nothing in sub-section (1) or sub-section (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of a hereditary office.

Notes

Principle.—The section adopts the general principle that unless there is a completed cause of action, limitation cannot run and that unless there is a person who can sue and a person who can be sued, there cannot be a complete cause of action. In other words, limitation cannot run unless there be a person who can sue or who can be sued.

The section provides that except in certain cases mentioned in sub-section (3) where a cause of action accrues in favour of or against the estate of a deceased person, or where a cause of action accrues only on the death of a person, limitation will not run unless there is a legal representative of the deceased who can sue or be sued. The cause of action contemplated is one which arises in favour of or against the *estate* of a deceased person or on the death of a person. Sub-section (1) relates to cases in which such cause of action accrues *in favour of* the estate of the deceased or accrues on the death of a person; sub-section (2) relates to cases in which such cause of action accrues *against* the estate of the deceased or accrues on the death of a person. In either case, the starting point of limitation is postponed till there is some person who is capable of suing or being sued.

Applicability

The section applies to *suits* as well as to *applications* but does not apply to appeals. The section also does not apply to suits (*i*) to enforce rights of pre-emption, (*ii*) for possession of immovable property, or (*iii*) for the possession of an here-

ditary office, because the application of this section to such cases would tend to create insecurity of title.

Section 16 is inapplicable to cases where death occurs after right to sue accrues. Where a cause of action has accrued to or against a person during his life-time, time continues to run under the statute, notwithstanding his death; *i. e.*, if time has already begun to run in the life-time of the deceased, it is not stopped by his death (see Section 9), but continues to run whether or not a legal representative is in existence who could sue or be sued, and the claim would become barred by the passing of the ordinary period of limitation computed from the original accrual of the cause of action.

17. Effect of fraud or mistake.—(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act·

(*a*) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(*b*) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(*c*) the suit or application is for relief from the consequences of a mistake ; or

(*d*) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first

had the means of producing the concealed document or compelling its production :

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(*i*) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(*ii*) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(*iii*) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

Notes

Principle.—This section deals with the effect of fraud on limitation and is based on the principle that the right of a party defrauded cannot be affected by lapse of time or by anything else done or omitted to be done by him so long as he remains, without any fault of his own, in ignorance of the fraud which has been committed. But as soon as the circumstances constituting the fraud become known to him, subsequent lapse of time will operate as a bar.

Those who fraudulently appropriate the property of others should be assured that no time will secure to them the fruits of their dishonesty, but that their children's children will be compelled to restore the property of which their ancestors had fraudulently possessed themselves. The reason why: if fraud has been concealed by one party and until it has been discovered by the other, the statute should not operate as a bar is that it ought not in conscience to run; the conscience of the party being so affected that he ought not to be allowed to avail himself of the length of time.

Effect of Mistake

Different valuers may give different opinions with regard to the value of any commodity, and such difference in opinion of valuers can by no means be said to furnish grounds of mistake to enable a litigant to invoke the benefit of Sec. 17 (1) (c). *Krishna Kumar Khemka* v. *Jagadis Narayana Bhan*, A.I.R. 1971 Cal. 322 (D. B.).

Sub-section (2).—Where the execution of a decree or order within the period of limitation has been prevented by fraud or force of the judgment-debtor, the court may, on the application of the judgment-creditor made after the expiry of the period of limitation extend the period for the execution of the decree or order. But such an application must be made by the judgment-creditor within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed

period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(*a*) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled, to the property or right ;

(*b*) the word "signed" means signed either personally or by an agent duly anthorised in this behalf, and

(*c*) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

Notes

It is not necessary that an acknowledgment within S. 18 must contain a promise to pay or should amount to a promise to pay (*Subbarsyada* v. *Narasimha*, A. I. R. 1936 Mad. 939).

The above section corresponds to S. 19 of the old Act, and makes slight changes.

Principle of the Section

The principle on which section 18 is based is that the bar of limitation should not be allowed to operate in cases in which the existence of a claim is acknowledged by persons who are under the liability. Every acknowledgment affords a new proof of the existence of the debt. So, the rules of limitation which are partly based upon the tendency of evidence to disappear would not be allowed to obscure the essential justice of a case which is that the defendant having obtained an advantage to which he is not entitled should be compelled to pay it back. Thus, it is clear that the period of limitation is not enlarged under this section but a fresh period begins to run from the date of the acknowledgment. Such an acknowledgment, however, does not extinguish the original cause of action nor create a new one. The basis of the claim is the original cause of action and the acknowledgment only shows that it still subsists and remains unsatisfied.

Section 18 lays down that if within the period of limitation prescribed, *i. e.*, after the time has begun to run and while it is actually running a *written acknowledgment* of a liability in respect of any property or right signed by the *party* against whom such property or right is claimed, or by the predecessor in interest of the person sought to be made liable, then a fresh period of limitation equal to the period originally prescribed by the Limitation Act will begin to run from the date of the acknowledgment. The period of limitation which would have actually expired at the date of acknowledgment would go for nothing. For instance, a period of three years is prescribed by the Indian Limitation Act for an ordinary oral debt. After two years have expired the debtor gives a written acknowledgment, say a letter

signed by him to the creditor saying that he is very sorry that he has not paid up the debt yet. A fresh period of three years will start from the date of the letter. The previous two years that had already elapsed at the time of writing the letter would go for nothing and will be of no consequence.

Acknowledgment within prescribed period

The acknowledgment should have been made before the claim had become time-barred and that is the prescribed period. 1954 A. L. J. 712 (F. B.).

The day on which the acknowledgment is made will have to be excluded in computing the period of limitation. *Somshwar Bapurao Nilakhe* v. *Nivritti Baburao Gholave*, A.I.R. 1973 Bom. 147 & also see *Jainarayan* v. *Vithoba* A. I. R. 1923 Nag. 143.

Requisites of a valid acknowledgment

1. *Acknowledgment must be made before the expiration of the period of limitation.*—In other words, the acknowledgment must be made after the period of limitation has begun to run and while it is actually running. The expression "period prescribed" does not refer exclusively to the period prescribed by the first schedule to the Act. The expression will include any period prescribed by the Act, whether in the body of the Act or in the first schedule. Thus, an acknowledgment may be made before the expiry of the period of limitation as extended by the operation of section 14 of the Act.

An acknowledgment made after the expiry of the original period of limitation but within the period as extended by a Provinicial Act, should be deemed to be an acknowledgment or payment made within the period prescribed. [*Kamta Prasad* v. *Gulzari Lal*, 1954 A. L. J. 712 (F. B.)].

2. *Acknowledgment of liability must be in writing.*—Hence an *oral* acknowledgment is not sufficient. Similarly, a mere payment of a sum of money towards the debt is not sufficient under this section although such payment may be intended as an acknowledgment of the debt.

3. *Acknowledgment must be signed by the person making*

the acknowledgment or by his agent duly authorized in this behalf.—An acknowledgment not so signed will not be sufficient for the purpose of this section. Thus, a telegram cannot constitute a sufficient acknowledgment under this section as telegrams are not signed by the parties sending them. Signature of an agent acknowledging the debt will not do, unless the agent is duly authorised to make such an acknowledgment. A general authority is of no avail. A special authority to acknowledge such a debt is necessary. Signed initials instead of full signature do not affect the binding nature of legality of the acknowledgment. *M. Achi* v. *P. S. M. S. Chettiar*, A. I. R. 1957 Mad. 8.

A statement made in the balance sheet of a company that the company owed a specific sum to a shareholder to whom that balance-sheet was sent in the ordinary way, would amount to a sufficient acknowledgment. But a statement in the balance-sheet signed by the directors, as a board acting on behalf of the company, containing a promise to pay to themselves the amount of the director's fees, is not a promise to pay on behalf of the company and cannot be relied upon as an acknowledgment. The fact that the balance-sheet was certified by the auditors does not affect the position. An auditor of a company is (apart from any special contract) not an agent of the company, at any rate for the purpose of being able to bind the company by merely signing the normal certificate at the foot of the balance-sheet. *Transplanters (Holding Co.) Ltd., In re.* (1958) 1 W. L. R. 872.

4. *Acknowledgment must be made by the party against whom any property or right is claimed, or by some person through whom, he derives title or liability.*—It is sufficient under this section if the acknowledgment has been made by a person against whom the right is claimed in the suit. It is not necessary that at the time when the acknowledgment is made, such person must have an interest in the property in respect of which the acknowledgment is given. An auction-purchaser derives his title from the judgment-debtor. Hence, if the judgment-debtor makes an acknowledgment of liability in respect of a mortgage on property, the acknowledgment will be binding on the auction purchaser.

5. Acknowledgment must be in respect of the particular property or right claimed in the suit or application.—An acknowledgment of liability under this section must be in respect of the particular property or right claimed in the suit. In other words, unless it is shown that the right acknowledged is identical with the right claimed in the suit, the section will not apply. Thus where the defendant owes several debts to the plaintiff and aknowledges his liability in respect of a debt and it is not possible to identify the debt acknowledged with the one claimed in th suit, the acknowledgment will be ineffective under this section.

Regarding the essential requirements of a valid acknowledgment the Supreme Court made the following observation in the case of *Shapoor Fredoom Magda* v. *Durga Prasad Chamaria* A. I. R. 1961 S. C 1236:

"It will be noticed that some of the relevant essential requirements of a valid acknowledgment are that it must be made before the relevant period of limitation has expired, it must be in regard to the liability in respect of the right in question and it must be made in writing and must be signed by the party against whom such a right is claimed..... Oral evidence may be given about the time when it was signed but..... oral evidence of its contents shall not be received."

An ackowledgment merely recovers the debt; it does not create a new right of action and the statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditar and it must appear that the state ment is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. In construing words used in the statement made in writing oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally the courts lean in favour of a liberal construction.

This view has been reiterated by the Supreme Court in the case of *Tilak Ram* v. *Nathu*, A. I. R. 1967 S. C. 935, wherein it was observed that mere statement expressing jural relationship between parties does not constitute acknowledgment. Statement to fall within acknowledgment must show that it was made with intention of admitting such jural relationship subsisting at the time when it was made.

A receipt may serve, other conditions being satisfied as an acknowledgment of the earlier debt and extend limitation for a suit based on the earlier debt. *Mrs. Florence Misra* v. *Daulat Ram*, A. I. R. 1968 All. 316 (F. B.).

Date of acknowledgment

The date of acknowledgment is very important even crucial for the purposes of section 18. Sub-section (2) provides that if the document containing the acknowledgment is undated, oral evidence may be given to prove the date of writing. This is an encroachment upon the provisions of section 92 of the Evidence Act. But for proving the other terms (terms other than the date) of the document containing the acknowledgment, section 92 of the Indian Evidence Act has full force inasmuch as in the terms of the document, *i. e.*, the actual terms in which the acknowledgment has been made must be proved by the production of the document itself as required by section 92.

Balance sheet of a limited company.—An admission of indebtedness in a balance-sheet is a sufficient acknowledgment under S. 18. A document is not taken out of the purview of S. 18 merely on the ground that it is made under compulsion of law as in the case of a balance-sheet which is required to be made both by the Companies Act and the articles of association of a company (*Bengal Silk Mills Co.* v. *Ismail Golam Hossain Ariff*, A. I. R. 1962 Cal. 115).

Acknowledgment of liability by pleader on behalf of client.- Though a lawyer in the ordinary course of his duties as pleader has authority to bind his client by admissions of fact, yet that should not relate to matters outside the scope of the case in which he is engaged and further it should be neces-

sary for the purpose for which he is retained. The court has, therefore, to see whether at the time the lawyer makes the admission it was necessary for the purpose of the matter in dispute to make such an admission, for it is such an admission, that can bind his client.

The statement of an Advocate admitting the debt, a portion of which had already been decreed, does not serve as an acknowledgment of the said portion. (*Buddhau Lal* v. *Raja Pertabgir*,) 1961 A. I. R. Andh. Pr. 467 (F. B.).

Acknowledgment by surety.— Under this section acknowledgment has to be made by a party or person against whom the right is claimed. Where the debt is sought to be recovered both against the principal debtor as well as the surety the acknowledgment by the surety does not save period of limitation against the principal debtor. The right will only be saved against the surety. *Hazara Singh* v. *Bakhshish Singh*, A. I. R. 1962 Punjab, 495.

Explanation

The three clauses of the explanation attached to the section specify and provide for the difficulties which may be set up or appear in the application of the provisions of the section. An acknowledgment may fail to specify with exactitude the nature of the property or the right ; or the man acknowledging the liability may couple his acknowledgment with a statement that the time for performance, delivery, enjoyment or payment of the property or right has not arrived; or he acknowledges the right but refuses to perform it or claims that he also has claims against the plaintiff by way of set off or even the fact that the acknowledgment is not addressed to the creditor himself but to a third party will not detract from the value of the acknowledgment for purposes of this section. Under all the above and similar circumstances, the court will accept the central fact that the debt stands acknowledged and a fresh period will begin to run from that point.

An acknowledgment of liability need not be express; it may be by implication, although that implication must in all cases be a necessary implication from which an acknowledg-

ment, clear and unequivocal, can be inferred. Any written admission by a debtor of the existence of an unsettled amount with a promise to pay the balance, if any due, is sufficient acknowledgment, within the meaning of Sec. 18. *Saranghar Singh* v. *Lakshminarayan*, 1955 B. L. J. R. 282 : A. I. R. 1955 Pat. 320.

Explanation clause (*b*)

"duly authorised in this behalf"

Clause (b) to the Explanation attached to section 18 in saying "for the purposes of this section "signed" means signed either personally or by an agent duly authorised in this behalf" has not limited in any way the manner in which the authority can be given. The words "duly authorised" include duly authorised either by the action of the party indebted or by force of law or order of the Court. *S. M. Kamgarh Shah* v. *Deo Dhabal Dola*, (1962) 1 S. C. J. 260. See also *Annapagauda* v. *Sangadiapp*, (1901) B. L. R. 221 (F.B.) ; *Rashbehary* v. *Anand Ram*, I. L. R. 43 Cal. 211 ; *Ramcharan Das* v. *Gaya Parsad*, I.L.R. 30 All. 422 ; *Lakshamanan* v. *Sadayappa*, A. I. R. 1919 Mad. 816; *Thankamma* v. *Kunhamma*, A. I. R. Mad. 370.

Explanation clause (c).—An application for the execution of a decree or order cannot be deemed to be an application in respect of any property or right and therefore there can be no extension of time by acknowledgments in respect of execution applications.

19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made :

Provided that save in the case of payment of interest made before the lst day of January, 1928, an

acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment,

Explanation.—For the purposes of this section,—

(*a*) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment ;

(*b*) "debt" does not include money payable under a decree or order of a court.

Notes

It would be clear from the language of the section that to attract its operations two conditions are essential : first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him.

It is the payment which really extends the period of limitation under this section, but the payment has got to be proved in a particular way and for reasons of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. *Sant Lal Mahton* v. *Kamla Prasad*. A. I. R. 1951 S.C. 477.

The principle underlying the section is that such payment implies *an admission of a right and an acknowledgment of the corresponding liability.*

Actual production before Court of writing incorporating fact of payment not necessary

The word 'appears' in the proviso only means that the payment was incorporated in a writing brought into existence by the person making the payment or at his instance in a writing signed by him that this fact should appear to the

court to be established by the evidence in the case. It does not mean that the writing should be actually in existence before the Court at the moment when the court is adjudicating on the point in issue. There would be a substantial compliance with the provisions of section 19, if payment was actually made before the expiry of the period of limitation and such payment is proved to have been incorporated in a writing signed by the debtor or in a writing made by him and it is not necessary to actually produce the writing before the Court. [*Sada Shiva* v. *Mahabir Prasad*, 1959 A. L. J. 552].

Payment by Cheque

Where payment is made by cheque and is conditional, the mere delivery of the cheque on a particular date does not mean that the payment was made on that date unless the cheque was accepted as unconditional payment. Where the cheque is not accepted as unconditional payment, it can only be treated as a conditional payment In such a case the payment for purposes of Sec. 19 would be on the date on which the cheque would be actually payable at the earliest, assuming that it will be honoured. The fact that a cheque is presented later than the date it bears and then paid is immaterial for it is the earliest date on which the payment could be made that would be the date where the conditional acceptance of a post-dated cheque becomes actual payment when honoured.

Payment by cheque would not save limitation under section 19 if the cheque is dishonoured on presentation to the bankers on whom the cheque has been drawn. Section 19 starts with the words "where payment on account of a debt or of interest" is made before the expiration of the prescribed period. If payment is made by cheque and the cheque is not honoured, it cannot be said that the amount represented by the cheque has been "paid" by the drawer to the payee. *Northtern India Finance Corporation (P) Ltd.* v. *R. L. Soni*, A. I. R. 1973 Punjab and Haryana 35.

Where a post-dated cheque is accepted conditionally and it is honoured, the payment for purposes of Sec. 19 can only be on the date which the cheque bears and cannot be on the

date the cheque is handed over, for the cheque being post-dated, can never be paid till the date given on the cheque arrives. *Jiwanlal Achariya* v. *Rameshwarlal Agarwalla*, A.I.R. 1967 S. C. 1118.

In the event of a post-dated cheque given on the date of the loan in repayment of debt, being dishonoured, there is no payment at all either on the part of the debt or the whole of it with the result that the debt in question continues to exist and hence limitation could not be counted from the date when the cheque was dishonoured but from the date of the loan. *Arjunlal Dhanji Rathod* v. *Dayoram Premji*, A. I. R. 1971 Pat. 278.

Example

H took a loan of Rs. 500/- from *K* and went out. After 2 years and 11 months he sent money to his son, instructing him to pay the same to *K* towards interest of the said loan. The son pays the money accordingly to *K* and signs the endorsement of the payment on the deed of loan. After 2 years of the said payment *K* brings a suit against *H* to recover the loan and remaining interest, claiming fresh period of limitation from the date of payment.

The suit of *K* is within time inasmuch as the last payment was made by *H*'s son who was duly authorised by *H* in this behalf and as such under section 20 *K* got a fresh lease of the period of limitation from the date of such payment.

Distinction between section 18 and section 19

1. Sections 18 and 19 are not mutually exclusive. A payment which, owing to some defect, does not fulfil the requirements of section 19 may nevertheless operate as acknowledgment of liability and as such save limitation under section 19, if the conditions of that section are fulfilled.

2. Section 18 applies to suits and applications in respect of any *property or right*, while section 19 applies only to suits on *debts and legacies*.

3. An acknowledgment of liability under section 18 operates only against the person against whom such property or right, in respect of which the acknowledgment is made, is

claimed: A payment of interest as such or a part payment, of principal, on the other hand, operates against all persons liable in respect of the debt in respect of which the payment is made and not merely against the person making the payment or those deriving title under him subsequent to such payment.

4. An acknowledgment under section 18 need not be addressed to the person entitled to the property or right, but a payment under section 19 must be made to the person entitled to payment.

5. Under section 18, a mere writing containing an admission of liability in respect of the property or right claimed is enough. But under section 19, two things are necessary, *viz.*, (a) a payment, and (b) a writing recording such.

Distinction between effect of paying interest and effect of paying principal

Section 19 makes a distinction in its operation between a payment of interest and a payment of principal. In order that a payment of interest may give a fresh period of limitation, the payment must be a payment for interest as such. In other words, the debtor at the time of making the payment must have intended that the payment should be for interest. A payment for principal need not be a payment as such, but it is necessary that it should be payment of part only of the principal. If a debtor makes payment to a creditor without any specification and the creditor appropriates the money towards interest, the section would not apply as the payment cannot be said to be a payment of interest *as such.*

Payment must be made before the expiration of the prescribed period. Payment after the prescribed period does not save limitation.

The words "prescribed period" means that payment should have been made before the claim had become time-barred. [*Firm Kamta Prasad* v. *Gulzari Lal*, 1954 A. L. J. 712 (F. B.)].

Payment by whom to be made.—(*a*) Payment of interest on a debt or legacy must be made by a person liable to pay the debt or legacy or by his duly authorised agent. A

mortgagor who has parted with all his interest in the mortgaged property is not a person liable to pay the debt and the payment made thereafter by him cannot save limitation. [*Indu Bala* v. *Monimala Devi*, A. I. R. 1955 Pat. 505]. (*b*) Part payment of the principal of a debt must be made by the debtor himself or by his duly authorised agent.

Payment to whom to be made.—The section does not say as to whom payment should be made. But naturally, it must be made to the person entitled *i. e.*, the creditor or to his duly authorised agent.

Person liable to pay the debt.—The term person liable to pay that debt, in section 19 is not limited to a person who is personally liable to pay the debt but it also includes a person who is not personally liable but whose interest in the family property is liable. Hence payment by a junior member of part of a joint Hindu family debt would extend the period of limitation under section 19, as against such member alone and not against other members of the joint family.

Mode of payment.—Section 19 does not specify any particular mode or form of payment. Payment under this section may be made not only in money, but in any other medium that the creditor may choose to accept. Thus, payment in kind may be made. [*A. Desai* v. *Madan Lal*, A. I. R. 1954 Mad. 890].

When a mortgagee is let into possession of the mortgaged property and allowed to receive the rent and profits of that property as and when they fall due in payment of interest or principal of the mortgage money, every such receipt will give a fresh start to the period of limitation. But in case of usufructuary mortgage where the receipt of rents and profits is the essence of the mortgage a maximum period of 60 years has been given beyond which there will be no more extension of time on the basis of the receipt of rent and profits or any other ground.

Land in this sub-section refers to cultivable land and does not include either proviso or a site for house. [*G. R. Reddi* v. *Muniratnammal*, A. I. R. 1954 Mad. 890].

Proviso.—The purpose of the use of the word 'acknowledgment' in the proviso was to indicate that the mind of the person making the payment was consciously working when his hand affixed the signature or made the writing. It, therefore, means nothing more than that the writing was the conscious act of a person who realised that he was liable, in other words, it was his intelligent act and not an unitelligent act. Such acknowledgment should indicate that the person making the payment was conscious of the fact that payment was being made and that payment was being made as interest. Therefore, it cannot be said that something more than a mere entry in the account books is required for the purpose of complying with the provisions of the proviso in section 19. [*Sada Shiv* v. *Mahabir Pd.*, 1959 A.L.J. 552].

It is clear from the expressions used in the proviso as well in section 19 itself that the payment has to be made before the expiration of the prescribed period. The only condition is that there should be an acknowledgment of the payment in writing, in the writing of or in the writing signed by the judgment-debtor who makes the payment. It is not mentioned in the proviso that the writing or the signature or the writing with the signature should be made before the expiration of the prescribed period. If a part payment, therefore, is made within the period of limitation, the mere fact that the writing evidencing the part payment was made after the period of limitation had expired, would not render such handwriting useless for the purpose of saving a claim from the limitation bar. This section requires that the payment must be made within the prescribed period. It does not require that the writing should be made before the expiry of the prescribed period. *Ramchandra Vinayak Badamikar* v. *Paygonda Sargouda Patil*, A. I. R. 1973 Bomb. 163. The Supreme Court has also endorsed this view in *Sant Lal* v. *Kamla Prasad*, A. I. R. 1951 S. C. 477.

20. Effect of acknowledgment or payment by another person.—(1) The expression "agent duly authorised in this behalf" in sections 18 and 19 shall, in the case of a person under disab-

ility, include his lawful guardian, committee or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections—

(*a*) an acknowledgment signed or a payment made in respect of any liability by, or by the duly authorised agent of, any limited owner of property who is governed by Hindu law, shall be a valid acknowledgment or payment, as the case may be, against a reversioner succeeding to such liability, and

(*b*) where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family.

Notes

Section 20 is a section which may be said to be an explanatory as well as a supplementary section to sections 18 and 19. The section only deals with the question as to who can keep alive a right which is not time barred. It does not deal with the question as to who can revive a time barred debt. Clause (1) of the section states that the expression "agent duly authorized in this behalf" used in the two foregoing sections

viz., Sections 18 and 19 in the case of a person under disability includes the guardian, the committee or manager of such a person as well as the agent of such guardian, committee or manager duly authorized to make such an acknowledgment under section 18 or to make such payment under section 19.

Lawful guardian

"Lawful guardian" means a person who in law, represents the minor. The phrase includes natural guardians who, under the law, are the legal guardians of the minor. Thus, after the father's death, the mother is the natural and legal guardian of a Hindu minor and so she will be lawful guardian for the purposes of this section. The section contemplates a lawful guardian of property. A mere guardian of the person of a minor is not his lawful guardian within the meaning of this section. Thus elder brother is not a lawful guardian of a Hindu minor during the mother's lifetime.

Sub-section (2)

Sub-Section (2) of this section is important inasmuch as it declares that one of several joint contractors, partners, executors, mortgagees, will not render the *other* joint contractors, partners, executors or mortgagees liable under an acknowledgment or payment made by him or by his duly authorized agent.

Joint Contractors—Effect of acknowledgment or payment by one of them

The expression "joint contractors" necessarily implies that the persons have jointly entered into a contract. Where one of them dies, his successor will be in the same legal position and will be a joint contractor with the other. But where the contract is entered into by sole contractor, his successors will be only successors of a sole contractor and cannot have the character of joint contractors. Although there is difference of opinion as to whether the successors of a sole contractor are joint contractors or not, yet the balance of authority is in favour of the view that such persons are not joint contractors.

Under section 18 acknowledgment saves limitation only as against the person who makes the acknowledgment and those who claim under him. Hence, where, an acknowledgment of liability is made by one of several joint contractors, limitation is saved only as against the particular joint contractor who makes the acknowledgment and those who claim under him and not as against others. Where, however, any of the other joint contractors has authorised the acknowledgment to be made, it will bind him also and limitation will be saved as against him also. The mere fact that certain persons are related to each other as joint contractors cannot make them, by itself, agents of each other for making acknowledgments of liability.

As regards a *payment* under section 19 where the debt is common to several joint debtors, a payment by any one of them will save limitation as against the others also. The effect of this provision is curtailed in the case of *joint contractors* by sub-section (2) of this section. Hence, in the case of joint contractors, though the debt may be common to all of them, and notwithstanding the provisions of section 19, a payment by one of them will not save limitation against the others.

Co-partners.—An acknowledgment of liability by a partner is effective and saves limitation only as against the particular partner who makes the acknowledgment or payment and those who claim under him, but not against the other co-partners. But an acknowledgment or payment by a partner will save limitation against the other partners also where the latter have authorised such acknowledgment or payment. Such authorization need not be express and may be implied from the facts and circumstances of the case. Under the law of partnership, a partner may be presumed to have implied authority on behalf of all the partners to make all such acknowledgments and payments as are made in the usual course of the partnership-business. Hence, if the nature of the business of the firm is such that acknowledgments of liability or making part payments or payments of interest are things done in the usual course of the business, a partner may be presumed to have been authorized by the other partners to make such acknowledgments or payments.

Direct evidence that one of several partners or co-contractors had authority to acknowledge liability or make payments so as to save limitation as against his partners or co-contractors is not necessary, but such authority can be inferred from surrounding circumstances. *Veeranna* v. *Veera Bhadhraswami* A.I.R. 1919 Madras 1140 (F. B.) In *Annamalai Patar* v. *Natesa Iyer* A. I. R. 1915 Mad. 307 it was held that the circumstances that there was a series of endorsements, some signed by one and some signed by the other of two joint promisors was sufficient to infer that each joint promisors had authorized the other to make the acknowledgments so as to bind both. See *Ramakrishna Reddi* v. *P. Dasa Muni Reddi*, A. I. R. 1973 A. P. 33.

Co-mortgagors.—An acknowledgment of liability by one co-mortgagor operates only against him and those who claim under him and cannot therefore save limitation against the other co-mortgagors. The reason is that apart from the provisions of section 20 (2), even under section 18, an acknowledgment by one of several joint debtors is effective only against the person making the acknowledgment and those who claim under him and not against his co-debtors, unless the co-debtors have authorised such acknowledgment to be made. The effect of section 20 (2) in cases of co-mortgagors is to provide that the mere fact that persons stand to each other in the relation of co-mortgagors does not make them *ipso facto* agents of each other for the purpose of making acknowledgments under section 18.

As regards the question whether a payment under section 19 by one of the co-mortgagors can save limitation against the other co-mortgagors, there is a conflict of opinion on the point.

The balance of authority is, however, in favour of the view that payment by one of the co-mortgagors will *not* save limitation against the other co-mortgagors. [*See Ram Kumar Pandey* v. *Hira Lal*, 1939 A. L. J. 66 and *Ehsan Ullah* v. *Dukhli Din*, I. L. R. 27 All. 575].

Hindu trading family.—Where a joint Hindu family carries on business, the members of the family are in the

position of partners in regard to persons dealing with the business. Hence, as in the case of other partnerships, an acknowledgment or payment by any member of the family made in the course of the business may be presumed to be authorised by the other members of the family.

Co-executors.—An executor can make acknowledgments of liability under section 18 and payments under section 19 on behalf of the state. Where there are more than one executor, an acknowledgment or payment by one of them alone will not be effective against the others.

Co-debtors.—Payment made by a debtor cannot extend limitation against a co-debtor in view of Sec. 20 (2). [*Federal Bank of India* v. *Som Devi*, A. I. R. 1956 Punjab 21].

What is an acknowledgment ?

An acknowledgment is an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received, but it is not enough that he refers to a debt as being due from somebody. In order to take the case out of the statute there must, upon the fair construction of the letter, read by the light of the surrounding circumstances, be an admission that the writer owes the debt. *B. Shambumal Gangram* v. *The State Bank of Mysore*, A. I. R. 1971 Mysore 156 (D. B.).

Acknowledgment or payment by Hindu widow

Sub-section 3 (a) of section 20 provides that an acknowledgment signed or a payment made, in respect of any liability by, or by the duly authorized agent of any widow governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be, against a reversioner.

Acknowledgment or payment by manager of Hindu joint family

The manager of a Hindu joint family can make acknowledgment and payment so as to save limitation in regard to liabilities which are binding on the family. Sub-section (3), clause (b) of section 20 provides that such payment or

acknowledgment must be deemed to be made on behalf of the family.

21. Effect of substituting or adding new plaintiff or defendant.—Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Notes

Section 21 deals with the effect of the law of limitation when a new party is substituted or added as a plaintiff or defendant after the suit has been instituted. Clause (1) of section 21 lays down that a suit in which a party is subsequently joined shall be deemed to be instituted as regards him (new party) on the date of his joinder. Whether the suit becomes barred as regards him alone or as regards other parties also is a matter which will have to be ascertained with reference to the substantive law relating to the subject of necessary parties to an action and the law relating to limitation of actions contained in the statutes of the country. For instance, if there are already two plaintiffs on the record of a suit and the third one is added in an action for the recovery of possession of land, say after 12 1/2 years after the cause of action has arisen, then the question of limitation would

be dealt with so far as this third plaintiff is concerned as if the suit was filed 12 1/2 years after the cause of action had arisen if it was a suit for the recovery of possession of immovable property from which the plaintiff had been illegally dispossessed, the suit should have been filed within 12 years of the date of dispossession. In the present case, the suit of the third plaintiff (newly added party) is barred by limitation as having been filed 12 1/2 years after the cause of action arose by his dispossession. If this suit was such that third plaintiff was a necessary party to the suit so that the suit could not go on without the third plaintiff being party to the suit, the whole suit would be barred and liable to be dismissed.

Similarly, if a defendant is added as a party, the force of limitation will be calculated as it arises, on the date on which the defendant was made a party to the suit, and if the addition of the defendant was beyond the period of limitation, the claim as against him would be barred by limitation and if the claim was such that it could not succeed as against the original defendants, without the addition of the third defendant, because no decree could be given without him, the whole suit would be barred.

Illustrations

Four brothers *A*, *B*, *C*, and *D*, governed by the Mitakshara Hindu Law inherit property from their father on his death. The property is co-parcenary property in their hands with all the four attributes of a joint property, *viz.*, unity of title, unity of interest, unity of possession and survivorship between them. *A*, the manager of the joint family, sues for rent due in respect of family property without joining other co-parceners *B*, C and *D* as co-plaintiff. Subsequently, one member of the joint family is added as a co-plaintiff beyond the period of limitation. Here, the newly added plaintiff is only a proper and not a necessary party to the suit and his addition beyond the period of limitation will not affect the suit by *A*, who in his own right as manager of the family, was entitled to institute the suit. [*Krishna Prasad* v. *Har Narain Singh*, I. L. R. 33 All. 272 (P. C.)]. Whereas the case would be

different in the case of a Bengal family governed by Dayabhaga Law. In such a case, the four brothers would inherit the property from their father as tenants-in-common with separate title, separate interest and with no survivorship between them. In such a case, all the persons inheriting the property will have to be made plaintiffs or defendants because one or two of them cannot give either a valid discharge as plaintiffs nor answer the claim in full as defendants.

But where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date and not on the date when he was made a party. The rule, that if after the institution of a suit a party is substituted or added as a plaintiff or defendant, the date of substitution or addition is to be considered, as regards that party, as the date of the institution of the suit except where the court is satisfied that the omission was due to a mistake made in good faith, does not apply to a case where a party is added or substituted owing to (i) an assignment or (ii) devolution of any interest during the pendency of a suit or (iii) where the plaintiff is made a defendant or a defendant is made a plaintiff. The reason is that in such cases the newly added person steps into the shoes of the deceased or the assignor as the case may be and no new considerations arise in the matters of limitation. The cause of action remains the original cause of action. Such persons can apply under Order 22 of the Civil Procedure Code for the substitution of their own names in place of the deceased or of the assignor. *It should be noted that the section does not apply to appeals* where *limitation will have full operation*. Under Order 41, Rule 20 an Appellate Court, however, has a discretion to determine in each case whether or not it will make an order for the addition of a party as respondent to the appeal. But section 21 does not apply to the addition of such parties in appeal. Therefore no question of limitation will arise in case of persons added as parties under Order 41, Rule 20.

The expression 'when he was so made a party' in sub-section (1) means the date of the application for impleading a party and not the date on which the party is actually brought on the record. [*Raman Lal* v. *Ramgopal*, A. I. R. 1954 Raj. 135].

22. Continuing breaches and torts.—In the case of a continuing breach of contract or in the case of a continuing tort a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

Notes

Section 22 deals with contracts and torts in which there is a continuing breach of the contract or the violation of the right which constitutes the tort. In such cases, a right to sue arises at every moment of the time during which the breach continues. The cause of action in such cases is said to be renewed *de die in diem* (from day to day).

Continuing breach of Contract.—The section applies to contracts which oblige a party to them (contracts to adopt a *course of action* during the continuance of the relation covered by the contract). For instance, *A* lets out his house to *B* under a lease that *B* shall during the continuance of his tenancy keep the house in best tenantable repairs. *B* neglects to repair the house. This is an example of continuing breach of contract and every moment during which disrepair continues the right of *A* to sue receives a fresh period of limitation. If on the other hand the obligation under a contract is to do a specific act at stated times such as paying the rent every quarter and the party under a duty to do the act fails to do it, the breach is not a continuing breach but a successive breach and hence the section does not apply.

In torts same principle applies. Thus, when the defendant obstructs or diverts a water course or drain, the cause of action in favour of the plaintiff will be renewed *de die in diem, i. e.*, every day so long as the obstruction or diversion is allowed to continue.

A husband or wife has right to the society of his or her spouse. The duty of the latter is a continuing duty inasmuch as it is a duty to continue to give the society. A breach of this obligation is a continuing wrong within the meaning of this section and time will begin to run at every moment of the time during which the society is withheld.

This section applies to cases which have not been expressly provided for in the schedule to the Act. In cases provided for in the schedule time begins to run from the dates shown in the schedule for the periods laid down there. The criterion for the applicability of this section both in cases of contracts as well as torts is not whether the right or its corresponding obligation is a continuing one, but whether the wrong is a continuing one.

23. Suits for compensation for acts not actionable without special damage.—In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Notes

Section 23 deals with cases where the cause of action is based not upon the act done but upon the injury ensuing from the act done. The section lays down that in case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results. The principle of this section is : where the cause of action lies, not in a specific act or omission, but in the resulting damage, the period of limitation runs from the time when the plaintiff sustained the lo s.

Example

A is the owner of a certain piece of land, which means that his ownership runs down to the centre of the earth. *A*

leases the subsoil, *i.e.*, the soil under the surface of the land owned by him to *B* to extract coal therefrom, the condition being that *B* will work the mine leased to him in such a way as to leave sufficient support to the surface land. *B* in his effort to get as much coal out of the mine as possible digs the mine too high up towards the surface which results in leaving too little support to the surface land. The surface land subsides after sometime. Time will run not from the date of the act which led to the subsidence of the land, namely, the digging up of the coal too high leaving no support to the surface land, but from the date of the subsidence itself. The act of digging may have been done years before the subsidence took place. The accrual of the damage is the cause of action here. The section does not extend or restrict any period of limitation but alters the date or time from which limitation has to be computed according to the third column of the first schedule.

24. Computation of time mentioned in instruments.—All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian Calendar.

Notes

Section 24 provides that for the purpose of the Limitation Act the Gregorian Calendar is to be used. (Gregorian Calendar means the British Calendar introduced by Pope Gregor XIII in 1582). In India there are in use several Calendars as, for example, San bat, Bengali, etc., but the period of limitation must not be calculated according to the native date. Where an instrument bears a native date only, and is made payable after a certain time that time whether, denoted by the month or the year, is to be computed according to the British Calendar. A executed a bond on *Sawan Sudi* 6, Sambat 2005, payable within 10 months. *Sawan Sudi* 6, Sambat 2005 is equivalent to August 10, 1948. The amount should be paid upto June 10, 1949. This period of 10 months is to be calculated according to the English months and not according to native date.

In a simple unregistered bond, the date of repayment of money was fixed as 30 *Chait* 1286 (11th April, 1880). The parties computed the time according to the Bengali Calendar, and 30th *Chait* 1289 being a holiday, the suit to recover money on the bond was instituted on the 1st *Baisakh* 1290 (13th April, 1883). The suit was held to be barred; time must be computed according to the English Calendar and the suit ought to have been instituted within 11th April, 1883 (29th Chait 1289).

PART IV

Acquisition of Ownership by Possession

25. Acquisition of easements by prescription.—(1) Where the access and use of light or air to and for any building have been peaceably enjoyed herewith an easement, and as of right, without interruption, and for twenty years, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

(2) Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(3) Where the property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words "twenty years" the words "thirty years" were substituted.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Notes

Scope.—Section 29, sub-section (4) provides that sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend The Indian Easements Act applies to the States of Madras, Bombay, U. P., Madhya Pradesh, Andhra Pradesh, Delhi and Coorg. Therefore, in view of Section 29, sub-section (4), in these States the law of easements in all its respects is solely governed by the Easements Act. In all other States in India, the law so far as the *acquisition* of easements by *prescription* is concerned, is that prescribed by the Limitation Act.

Section 25 provides as to the acquisition of easements by prescription. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years, the right to such access and use of light or air shall be absolute and indefeasible.

Sub-section (2) of section 25 lays down the period of 20 years required for creating a right of easement shall be taken to be a period ending within 2 years next before the institution of the suit, wherein the claim to which such period relates is contested. A title to easement is not complete merely upon the effluxion of the period of 20 years. However long the period of actual enjoyment may be, no absolute or indefeasible right can be acquired until the right is brought in question in some suit, and until it is so brought in question the right is inchoate only and in order to establish it when brought in question, the enjoyment relied on,

must be an enjoyment for 20 years and this period of 20 years' enjoyment must end within two years before the institution of the suit. Although an easement may have been enjoyed for 20 years, and thus the right has become indefeasible by prescription, if its enjoyment has been foregone for a period 2 years before the institution of the suit, the suit will fail.

"Peaceably.".—In order to establish a right of easement it is enough for the plaintiff to prove that he has been exercising the right peaceably and without any interruption, without express or implied permission of the owner of the servient tenement and without secrecy or stealth. The word "peaceably" means that the dominant owner has neither been obliged to resort to physical force himself at any time during the period of enjoyment, nor had he been prevented by the use of physical force by the defendant in his enjoyment of such right.

"Openly."—Except in the case of light or air, the enjoyment must be open and manifest and not clandestine. The reason of the requirement that the user must be open lies in the fact that acquiescence lies at the root of all prescription, and where the enjoyment is not open it cannot be said that the owner of the servient tenement actually or constructively acquiesced in or consented to the easement.

Without interruption.—An "interruption" within the meaning of the Act is an actual discontinuance or cessation of enjoyment of user by reason of an obstruction submitted to or acquiesced in for a year, not by the mere voluntary act of the claimant of the right but in consequence of an obstructive act done by a person other than the claimant. But if a cessation of user takes place due to an accident or a voluntary act or omission of the claimant himself, then it does not amount to an interruption.

As an easement.—The claimant must have enjoyed the right as an easement. Where there is unity of possession or ownership in the same person of both the tenements there cannot be any enjoyment as an easement during the period of unity.

As of right.—A user *as of right* simply means a user in the assertion of right.

Section 25 provides that where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement and as of right without interruption and for 20 years, the right of such access and use of light or air shall be absolute and indefeasable. In order to make such a right absolute and indefeasible, it is necessary to establish that the access and use of light had been enjoyed also as of right.

The words "as of right" mean "without permission or favour". The user as of right, therefore, connotes a user in the assertion of right as against all persons and would not mean a right acquired through a grant or permission from the servient owner. A permissive user is not a user as of right but it is an enjoyment in such a manner as not to involve the admission of obstructive right in the owner of the servient tenement. Whether a user was as of right or not has, therefore, to be decided on the basis of the surrounding circumstances and the facts established in the case. If long open user is established a presumption can legitimately be drawn in the absence of other circumstances that it has been as of right. Obviously the party claiming the easement has to establish that the user is as of right. If the enjoyment has not been made secretly or stealthily or by tacit sufferance or by leave or favour or by licence, but has been made openly and notoriously, it would be an enjoyment as of right. There is ample authority for the proposition that it is for the party opposing the claim of easement to show that user was on licence or by fraud, force or secrecy. The relationship between the parties and the circumstances under which the user has taken place would also be relevant factors for consideration in this behalf. *Gang Ram* v. *Tribeni Rai*, A. I. R. 1973 Allahabad 462.

Acquisition of easement against Government.—An easement by prescription may be acquired against Government by thirty years' enjoyment.

26. Exclusion in favour of reversioner of servient tenement.—Where any land or water upon, over or from, which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or in terms of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest of term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled on such determination to the said land or water.

Notes

Under section 26 of the Limitation Act, if the servient heritage has not been in the possession of the full owner, but has been under a lease for a term exceeding three years, or has been subject to an interest for life, the time during which such lease or interest has continued, is conditionally excluded from the computation of the period, that is, provided the person entitled to the servient heritage on the determination of such term or interest resist the claim within three years next after such determination. Under this provision two periods of valid enjoyment, separated by a period of invalid enjoyment, may be tacked together to make up the required enjoyment for 20 years. But this period of valid enjoyment for 20 years must end within 2 years next of the institution of the suit.

27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Notes

The general principle is that Limitation Act, in personal actions, bars only the remedy and does not extinguish the right itself. Section 27 is an exception to this general principle so far as *suits for possession of property* are concerned and lays down that after the expiry of the period thus prescribed for instituting a suit for possession of any property, the person who should have instituted such suit, but has failed to do so, shall cease to have any right to the property. After the expiry of the period, the law declares not simply that the remedy is barred but that the title is extinct in favour of the possessor. But this section is confined to *suits for possession only* and does not apply to a suit by a mortgagee for recovery of the money due to him by sale of the mortgaged property. The mortgagee's remedy may be barred if he omits to sue within the statutory period, but his right is not extinguished.

Sections 25 and 26 deal with the direct acquisition of rights to easements by adverse possession. Section 27 deals with the indirect acquisition of the ownership of corporeal property by possession or rather with the extinction of the right to property by prescription. The right that is extinguished by the operation of this section is the right of a *particular* person, whose suit for possession of the property has been barred. If the right of a Hindu widow is extinguished by limitation, it does not follow that the right of the reversioner shall also be extinguished. Similarly, if after the grant of a simple mortgage, the mortgagor is dispossessed of the mortgaged property, the mortgagor is the person entitled to institute a suit for possession of the property and consequently, if he does not sue within 12 years, his right is extinguished. But the simple mortgagees' right to bring the property to sale is not affected.

Applicability of Section.—(1) The section applies only where *suits* for possession of property become barred by limitation. It does not apply to *applications* for possession. (2) The section applies only to suits for which a period of limitation is prescribed by the Limitation Act itself. It does

not apply where a suit for possession is barred by time, otherwise than under the provisions of the Limitation Act.

Suit for possession of property.—Possession in section 27 is not confined to physical possession. It embraces both actual possession and possession in law.

Extinction of right of Government.—Where the Government has a right to the possession of land or other property and no suit is brought within thirty years to enforce such right, the right of the Government is extinguished under section 27. But in case of private owners contesting title to land between themselves, the law has prescribed a limitation of *twelve* years. After the expiry of the period of twelve years the law declares that not only the remedy is barred but the title also is extinguished.

PART V

Miscellaneous

28. Amendment of certain Acts.—In the Indian Easements Act, 1882, in section 15, for the words "sixty years", the words "thirty years", shall be substituted; and in the Code of Civil Procedure, 1908, section 48 shall be omitted.

29. Savings—(1) Nothing in this Act shall affect setion 25 of the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provision of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they

are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882, may for the time being extend.

Notes

Sub-section (1).—Section 25 of the Indian Contract Act provides that a promise to pay a time-barred debt is a good consideration and is valid. The Limitation Act on the other hand provides that an acknowledgment (which has been held to imply a promise to pay), would not be valid if made after the prescribed period. In order to clear this anomaly sub-section (1) of section 29 was introduced which expressly provides that nothing in the Limitation Act shall affect section 25 of the Indian Contract Act, 1872.

Sub-section (2).—Sub-section (2) provides that where any special or local law prescribes, for any suit, appeal or application, a period different from the period prescribed therefor by the Schedule, the provisions of the Limitation Act will not apply except to the extent expressly specified in this section. Where, however, a special or local law does not prescribe any period of limitation for a particular proceeding, though providing for others, the provisions of the Limitation Act would apply and it cannot be said that there is no limitation for such a proceeding. Section 3 is expressly mentioned as being applicable to cases where any special or local law prescribes for any suit, appeal or application a period of limitation different from the

period prescribed therefor by the Schedule. Therefore every suit, appeal or application for which a period of limitation is prescribed by a special or local law, must be dismissed if it is made or filed after the prescribed period, even though limitation is not set up as a defence. Sections 4 to 24 shall apply to such cases only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

Period of limitation which is different from that prescribed in any special or local law.—The words "period of limitation which is different from that prescribed in any special or local law" do not mean that the Limitation Act should provide for a definite period which is different from that prescribed in the special or local law. This was the majority view in the case of *Vidya Charan Shukla* v. *Khubchand Baghel*, A. I. R. 1964 S. C. 1099. This case was considering the applicability of Section 12 (2) of the Limitation Act to appeals under Section 116-A of the Representation of the People Act, 1951, which had provided a time limit for filing an appeal, but the first Schedule to the Limitation Act had not provided any. Even the absence of a provision prescribing time limit in the First Schedule to the Limitation Act was considered by the majority as prescribing a different period, because when the First Schedule prescribes no time limit for a particular appeal but the special law prescribes a time limit for it, it prescribes a period different from that prescribed in the former. Thus Section 29 (2) of the Limitation Act would apply even to a case where a difference between the special law and Limitation arose by the omission to provide for a limitation to a particular proceeding under the Limitation Act. See also *Hukumdev Narain Yadav* v. *Lalit Narain Mishra*, A. I. R. 1974 S. C. 480.

"Expressly excluded"

The words "expressly excluded" used in Section 29 (2) do not mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded.

Their Lordships of the Supreme Court laid down in the case of *Hukumdev Narain Yadav* v. *Lalit Narain Mishra* (Supra) that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. What the Court has to see is whether the scheme of the special law and the nature of the remedy provided therein are such that the Legislature intended it to be a complete Code. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the special Act.

The Mysore High Court has decided in a case that Section 5, Limitation Act does not apply to proceedings before a Tribunal constituted under the Mysore Land Reforms Act, 1961, which is not a Court, because in order to attract Section 29 (2) of the Limitation Act the proceedings initiated under a special or local law must be capable of being instituted before a Court only. If a special or local law provides for a special form for adjudication of disputes arising under it, although with a period of limitation different from the one prescribed under the Limitation Act, it would not attract the provisions of Section 29 (2) or any other provision of the Limitation in the absence of any specific provision having been made as to their applicability. *Bundo Banaji* v. *Bhaskar Balaji*, A. I. R. 1972 Mysore 311.

Sub-section (3).—This Act does not apply to any suit or other proceeding dealing with marriage and divorce except where the special Act dealing with matrimonial causes provide otherwise.

30. Provision for the suits, etc, for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908.—Notwithstanding anything contained in this Act,—

(*a*) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of five years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier ;

(*b*) any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier.

Notes

Where the period of limitation prescribed under the Limitation Act of 1963, for a suit is shorter than that prescribed under the Act of 1908, then Section 30 of the former Act, *viz*. 1963 Act has to be applied.

Where, however, the period prescribed for a suit under Art. 120 of the Limitation Act of 1908, had expired even prior to the filing of the suit the plaintiff cannot invoke Section 30 of the Limitation Act of 1963 and say that the suit has been filed within the time permitted therein after the commencement of the Act of 1963. (*Baby Ammal* v. *K. N. Rangubabu* (1972) 1 M. L. J. 194).

31. Provisions as to barred or pending suits, etc.—Nothing in this Act, shall,—

(*a*) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908, expired before the commencement of this Act ; or

(*b*) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement.

Notes

Section 31 only speaks of suits, appeals or applications which are instituted as per the period of limitation prescribed by the Indian Limitation Act, 1908 and not to the types of suits, which are provided by the new Limitation Act of 1963.

A suit contemplated by Article 96 of the Limitation Act of 1963 is not the same kind of suit for which the period of limitation was prescribed by the Limitation Act of 1908, so as to attract the provisions of Section 31 of the Act of 1963. If Section is interpreted to take away the right of suits contemplated by the new Article 96, the Court would be practically rendering the beneficial provisions introduced by Article 96 of the new Limitation Act nugatory. *Chinna Jeeyangur Mutt Tirpathi* v. *C. V. Purushotham*, A. I. R. 1974 Andhra Pradesh 175. A compronise decree dated 14·9·63 executable within three years under the Limitation Act of 1908 was put into execution on 27.4.66. The execution was clearly barred under 1908 Act because the decree was put into execution more than three years after the date of the decree. Although the execution case was filed after coming into force of the Limitation Act, 1963 which came into force on 1st January, 1964, and although according to Art. 136 of the 1963 Limitation Act, the execution case, *prima facie* was not barred by limitation, but it was barred in view of the provisions of Section 31 (a) of the 1963 Act. As the period of limitation had expired before the commencement of the 1963 Act on January 1, 1964, the execution case filed on 27.4.66 was barred by limitation. *Mangal Mahto* v. *Bihari Mahto*, 1969 Patna Law Journal Reports 226.

32. Repeal.—The Indian Limitation Act, 1908, is hereby repealed.

THE SCHEDULE

(Periods of Limitation)

[*See* Section 2 (*j*) and 3]

FIRST DIVISION—SUITS

Description of suit	Period of limitation	Time from which period begins to run
Part I.—Suits relating to accounts		
1 For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Three years.	The close of the year in which the last item admitted or proved is entered in the account, such year to be computed as in the account.
2 Against a factor for an account.	Three years.	When the account is, during the continuance of the agency, demanded and refused or. where no such demand is made when the agency terminates.
3 By a principal against his agent for moveable property received by the latter and not accounted for.	Three years.	When the account is during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.

	Description of suit	Period of limitation	Time from which period begins to run
4	Other suits by principals against agents for neglect or misconduct.	Three years.	When the neglect or misconduct becomes known to the plaintiff.
5	For an account and a share of the profits of a dissolved partnership.	Three years.	The date of the dissolution.
	Part II—Suits relating to contracts		
6	For a seaman's wages.	Three years.	The end of the voyage during which the wages are earned.
7	For wages in the case of any other person.	Three years.	When the wages accrue due.
8	For the price of food or drink sold by the keeper of a hotel, tavern or lodging house.	Three years.	When the food or drink is delivered.
9	For the price of lodging.	Three years.	When the price becomes payable.
10	Against a carrier for compensation for losing or injuring goods.	Three years.	When the loss or injury occurs.
11	Against a carrier for compensation for non-delivery of or delay in delivering goods.	Three years.	When the goods ought to be delivered.

	Description of suit	Period of limitation	Time from which period begins to run
12	For the hire of animals, vehicles, boats or household furniture.	Three years.	When the hire becomes payable.
13	For the balance of money advanced in payment of goods to be delivered.	Three years.	When the goods ought to be delivered.
14	For the price of goods sold and delivered where no fixed period of credit is agreed upon.	Three years.	The date of the delivery of the goods.
15	For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Three years.	When the period of credit expires.
16	For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Three years.	When the period of the proposed bill elapses.
17	For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years.	The date of the sale.

Description of suit	Period of limitation	Time from which period begins to run
18 For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Three years.	When the work is done.
19 For money payable for money lent.	Three years.	When the loan is made.
20 Like suit when the lender has given a cheque for the money.	Three years.	When the cheque is paid.
21 For money lent under an agreement that it shall be payable on demand.	Three years.	When the loan is made.
22 For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Three years.	When the demand is made.
23 For money payable to the plaintiff for money paid for the defendant.	Three years.	When the money is paid.

	Description of suit	Period of limitation	Time from which period begins to run
24	For money payable by the defendant to the plaintiff for money received by the defendant, for the plaintiff's use.	Three years.	When the money is received.
25	For money payable for interest upon money due from the defendant to the plaintiff.	Three years.	When the interest becomes due.
26	For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years.	When the accounts are stated in writing signed by the defendant or his agent duly authoritsed in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
27	For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years.	When the time specified arrives or the contingency happens.
28	On a single bond, where a day is specified for payment.	Three years.	The day so specified.

	Description of suit	Period of limitation	Time from which period begins to run
29	On a single bond, where no such day is specified.	Three years.	The date of executing the bond.
30	On a bond subject to a condition.	Three years.	When the condition is broken.
31	On a bill of exchange or promissory note payable at a fixed time after date.	Three years.	When the bill or note falls due.
32	On a bill of exchange payable at sight, or after sight but not at a fixed time.	Three years.	When the bill is presented.
33	On a bill of exchange accepted payable at a particular place.	Three years.	When the bill is presented at that place.
34	On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years.	When the fixed time expires.
35	On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years.	The date of the bill or note.

	Description of suit	Period of limitation	Time from which period begins to run
36	On a promissory note or bond payable by instalments.	Three years.	The expiration of the first term of payment as to the part then payable ; and for the other parts, the expiration of the respective terms of payment.
37	On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	Three years.	When the default is made unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is no such waiver.
38	On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years.	The date of the delivery to the payee.
39	On a dishonoured foreign bill where protest has been made and notice given.	Three years.	When the notice is given.
40	By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Three years.	The date of the refusal to accept.

Description of suit	Period of limitation	Time from which period begins to run
41 By the acceptor of an accommodation bill against the drawer.	Three years.	When the acceptor pays the amount of the bill.
42 By a surety against the principal debtor.	Three years.	When the surety pays the creditor.
43 By a surety against a co-surety.	Three years.	When the surety pays anything in excess of his own share.
44 (*a*) On a policy of insurance when the sum insured is payable after proof of death has been given to or received by the insurers.	Three years.	The date of the death of the deceased or where the claim on the policy is denied, either partly or wholly, the date of such denial.
(*b*) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.	Three years.	The date of the occurrence causing the loss, or where the claim on the policy is denied, either partly or wholly, the date of such denial.
45 By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years.	When the insurers elect to void the policy.

	Description of suit	Period of limitation	Time from which period begins of run
46	Under the Indian Succession Act, 1925, section 390 or section 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Three years.	The date of the payment of distribution.
47	For money paid upon an existing consideration which afterwards fails.	Three years.	The date of the failure.
48	For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Three years.	The date of the payment in excess of the plaintiff's own share.
49	By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Three years.	When the right to contribution accrues.

	Description of suit	Period of limitation	Time from which period begins to run
50	By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Three years.	The date of the payment.
51	For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	Three years.	When the profits are received.
52	For arrears of rent.	Three years.	When the arrears become due.
53	By a vendor of immovable property for personal payment of unpaid purchase-money.	Three years.	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
54	For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed when the plaintiff has notice that performance is refused.
55	For compensation for the breach of any contract, ex-	Three years.	When the contract is broken or (where there are successive

Description of suit	Period of limitation	Time from which period begins to run
press or implied not herein specially provided for.		breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.
PART III—Suits Relating to Declarations		
56 To declare the forgery of an instrument issued or registered.	Three years.	When the issue or registration becomes known to the plaintiff.
57 To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Three years.	When the alleged adoption becomes known to the plaintiff.
58 To obtain any other declaration.	Three years	When the right to sue first accrues.
PART IV—Suits Relating to Decrees and Instruments		
59 To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.
60. To set aside a transfer of property made by the guardian of a ward—		

Description of suit	Period of limitation	Time from which period begins to run
(*a*) by the ward who has attained majority ;	Three years.	When the ward attains majority.
(*b*) by the ward's legal representative—		
(*i*) when the ward dies within three years from the date of attaining majority ;	Three years.	When the ward attains majority.
(*ii*) when the ward dies before attaining majority.	Three years.	When the ward dies.
Part V—Suits relating to immovable property		
61 By a mortgagor— (*a*) to redeem or recover possession of immovable property mortgaged ;	Three years.	When the right to redeem or to recover possession accrues.
(*b*) to recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration ;	Twelve years.	When the transfer becomes known to the plaintiff.

	Description of suit	Period of limitation	Time from which period begins to run
	(*c*) recover surplus collections received by the mortgagee after the mortgage has been satisfied.	Three years.	When the mortgagor re-enters on the mortgaged property.
62	To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.	Twelve years.	When the money sued or becomes due.
63	By a mortgagee :		
	(*a*) for foreclosure :	Thirty years.	When the money secured by the mortgage becomes due.
	(*b*) for possession of immovable property mortgaged.	Twelve years.	When the mortgagee becomes entitled to possession.
64	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years.	The date of dispossession.
65	For possession of immovable property or any interest therein based on title.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.

Description of suit	Period of limitation	Time from which period begins to run
Explanation.—For the purposes of this article—		
(*a*) where the suit is by a remainder-man, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate or the remainder man, reversioner or devisee, as the case may be, falls into possession ;		
(*b*) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies ;		

	Description of suit	Period of limitation	Time from which period begins to run
	(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		
66	For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years.	When the forfeiture is incurred or the condition is broken.
67	By a landlord to recover possession from a tenant.	Twelve years.	When the tenancy is determined.
	PART VI—Suits relating to movable property		
68	For specific movable property lost, or acquired by theft, or dishonest mis-appropriation or conversion.	Three years.	When the person having the right to the possession of the property first learns in whose possession it is.

	Description of suit	Period of limitation	Time from which period begins to run
69	For other specific movable property.	Three years.	When the property is wrongfully taken.
70	To recover movable property deposited or pawned from a depositary or pawnee.	Three years.	The date of refusal after demand.
71	To recover movable property deposited or pawned, and afterwards brought from the depository or pawnee for a valuable consideration.	Three years.	When the sale becomes known to the plaintiff.
	Part VII—Suits relating to tort		
72	For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends.	One year.	When the act or omission takes place.
73	For compensation for false imprisonment.	One year.	When the imprisonment ends.
74	For compensation for a malicious prosecution.	One year.	When the plaintiff is acquitted or the prosecution is otherwise terminated.

	Description of suit	Period of limitation	Time from which period begins to run
75	For compensation for libel.	One year.	When the libel is published.
76	For compensation for slander.	One year.	When the words are spoken, or if the words are not actionable in themselves, when the special damage complained of results.
77	For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	One year.	When the loss occurs.
78	For compensation for inducing a person to break a contract with the plaintiff.	One year.	The date of the breach.
79	For compensation for an illegal, irregular or excessive distress.	One year.	The date of the distress.
80	For compensation for wrongful seizure of movable property under legal process.	One year.	The date of the seizure.

Description of suit	Period of limitation	Time from which period begins to run
81 By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855.	One year.	The date of the death of the person wronged.
82 By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855.	Two years.	The date of the death of the person killed.
83 Under the Legal Representatives Suits Act, 1855 against an executor, an administrator or any other representative.	Two years.	When the wrong complained of is done.
84 Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years.	When the perversion first becomes known to the person injured thereby.
85 For compensation for obstructing a way or a water-course.	Three years.	The date of the obstruction.
86 For compensation for diverting a water-course.	Three years.	The date of the diversion.

Description of suit	Period of limitation	Time from which period begins to run
87 For compensation for trespass upon immovable property.	Three years.	The date of the trespass.
88 For compensation for infringing copyright or any other exclusive privilege.	Three years.	The date of the infringement.
89 To restrain waste.	Three years.	When the waste begins.
90 For compensation for injury caused by an injunction wrongfully obtained.	Three years.	When the injunction ceases.
91 For compensation,—		
(*a*) for wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion ;	Three years.	When the person having the right to the possession of the property first learns in whose possession It is ;
(*b*) for wrongfully taking or injuring or wrongfully detaining any other specific movable property.	Three years.	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.

	Description of suit	Period of limitation	Time from which period begins to run
	PART VIII—Suits relating to trust and trust property		
92	To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Twelve years.	When the transfer becomes known to the plaintiff.
93	To recover possession of movable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Three years.	When the transfer becomes known to the plaintiff.
94	To set aside a transfer of immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Twelve years.	When the transfer becomes known to the plaintiff.
95	To set aside a transfer of movable property comprised	Three years.	When the transfer becomes known to the plaintiff.

Description of suit	Period of limitation	Time from which period begins to run
in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.		
96 By the manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of moveable or immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years.	The date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is later.
Part IX—Suits relating to miscellaneous matters		
97 To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One year.	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of

	Description of suit	Period of limitation	Time from which period begins to run
			the whole or part of the property, when the instrument of sale is registered.
98	By a person against whom an order under rule 63 or rule 103 of Order XXI of the Code of Civil Procedure, 1908 or an order under section 28 of the Presidency Small Cause Courts Act, 1882, has been made, to establish the right which he claims to the property comprised in the order.	One year.	The date of the final order.
99	To set aside a sale by a civil or revenue court or a sale for arrears of Government revenue or for any demand recoverable as such arrears.	One year.	When the sale *is* confirmed or would otherwise have become final and conclusive had no such suit been brought.
100	To alter or set aside any decision or order of a civil court in any proceeding other than a suit or any act or	One year.	The date of the final decision or order by the court or the date of the act or order of the officer, as the case may be.

	Description of suit	Period of limitation	Time from which period begins to run
	order of an officer of Government in his official capacity.		
101	Upon a judgment including a foreign judgment, or a recognisance.	Three years.	The date of the judgment or recognisance.
102	For property which the plaintiff has conveyed while insane.	Three years.	When the plaintiff is restored to sanity and has knowledge of the conveyance.
103	To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years.	The date of the trustee's death or if the loss has not then resulted, the date of the loss.
104	To establish a periodically recurring right.	Three years.	When the plaintiff is first refused the enjoyment of the right.
105	By a Hindu for arrears of maintenance.	Three years.	When the arrears are payable.
106	For a legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an intestate against an executor or an administrator or	Twelve years.	When the legacy or share becomes payable or deliverable.

Description of suit	Period of limitation	Time from which period begins to run
some other person legally charged with the duty of distributing the estate.		
107 For possession of a hereditary office.	Twelve years.	When the defendant takes possession of the office adversely to the plaintiff.

Explanation.—A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.

SECOND DIVISION—APPEAL

Description of appeal	Period of limitation	Time from which period begins to run
108 Suit during the life of a Hindu or Muslim female by a Hindu or Muslim who, if the female died at the date of instituting the suit, would be entitled	Twelve years	The date of the alienation.

Description of appeal	Period of limitation	Time from which period begins to run
to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.		
109 By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years.	When the alienee takes possession of the property.
110 By a person excluded from a joint family property to enforce a right to share therein.	Twelve years.	When the exclusion becomes known to the plaintiff.
111 By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years.	The date of the dispossession or discontinuance.
112 Any suit (except a suit before the Sup-	Thirty years.	When the period of limitation would

	Description of appeal	Period of limitation	Time from which period begins to run
	reme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir.		begins to run under this Act against a like suit by a private person.
	Part X—Suits for which there is no prescribed period		
113	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years.	When the right to sue accrues.
114	Appeal from an order of acquittal,—		
	(a) under sub-section (1) or sub-section (2) of section 417 of the Code of Criminal Procedure, 1898;	Ninety days.	The date of the order appealed from.
	(b) under sub-section (3) of section 417 of that Code.	Thirty days.	The date of the grant of special leave.
115	Under the Code of Criminal Procedure, 1898—		

	Description of appeal	Period of limitation	Time from which period begins to run
	(a) from a sentence of death passed by a court of session or by a High Court in the exercise of its original criminal jurisdiction ;	Thirty days.	The date of the sentence.
	(b) from any other sentence or any order not being an order of acquittal—		
	(i) to the High Court;	Sixty days.	The date of the sentence or order.
	(ii) to any other court.	Thirty days.	The date of the sentence or order.
116	Under the Code of Civil Procedure, 1908,—		
	(a) to a High Court from any decree or order;	Ninety days.	The date of the decree or order.
	(b) to any other court from any decree or order.	Thirty days.	The date of the decree or order.
117	From a decree or order of any High Court to the same Court.	Thirty days.	The date of the decree or order.

THIRD DIVISION—APPLICATIONS

Description of application	Period of limitation	Time from which period begins to run
Part I—Applications in specified cases		
118 For leave to appear and defend a suit under summary procedure.	Ten days.	When the summons is served.
119 Under the Arbitration Act, 1940,—		
(a) for the filing in court of an award;	Thirty days,	The date of the service of the notice of the making of the award;
(b) for setting aside an award or getting an award remitted for reconsideration.		The date of the service of the notice of the filing of the award.
120 Under the Code of Civil Procedure, 1908, to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.	Ninety days.	The date of death of the plaintiff, appellant, defendant or respondent, as the case may be.
121 Under the same Code for an order to set aside an abatement.	Sixty days.	The date of abatement.

Description of application	Period of limitation	Time from which period begins to run
122 To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days.	The date of dismissal.
123 To set aside a decree passed *ex-parte* or to rehear an appeal decreed or heard *ex parte*.	Thirty days.	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
Explanation.—For the purpose of this article, substituted service under rule 20 of Order V of the Code of Civil Procedure, 1908 shall not be deemed to be due service.		
124 For a review of judgment by a court other than the Supreme Court.	Thirty days.	The date of the decree or order.

	Description of application	Period of limitation	Time from which period begins to run
125	To record an adjustment or satisfaction of a decree.	Thirty days.	When the payment or adjustment is made.
126	For the payment of the amount of a decree by instalment.	Thirty days.	The date of the decree.
127	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Thirty days.	The date of the sale.
128	For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days.	The date of the dispossession.
129	For possession after removing resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	Thirty days.	The date of resistance or obstruction.

	Description of application	Period of limitation	Time from which period begins to run
130	For leave to appeal as a pauper—		
	(*a*) to the High Court	Sixty days.	The date of decree appealed from.
	(*b*) to any other court.	Thirty days.	The date of decree appealed from.
131	To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1898.	Ninety days.	The date of the decree or order or sentence sought to be revised;
132	To the High Court for a certificate of fitness to appeal to the Supreme Court under clause (1) of Article 132, Article 133 or sub-clause (c) of clause (1) of Article 134 of the Constitution or under any other law for the time being in force.	Sixty days.	The date of the decree or order or sentence.
133	To the Supreme Court for special leave to appeal,—		

Description of application	Period of limitation	Time from which period begins to run
(*a*) in a case involving death sentence;	Sixty days.	The date of the judgment, final order or sentence.
(*b*) in a case where leave to appeal was refused by the High Court ;	Sixty days.	The date of the order of refusal.
(*c*) in any other case.	Ninety days.	The date of the judgment or order.
134 For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year.	When the sale becomes absolute.
135 For the enforcement of a decree granting a mandatory injunction.	Three years.	The date of the decree or where a date is fixed for performance, such date.
136 For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years.	Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or

delivery in respect of which execution takes place ... sought.

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

Other Applications

Any other application for which no period of limitation is provided elsewhere in this Division.